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CHICAGO RIVER

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HEARINGS

BEFORE A

SUBCOMMITTEE OF THE
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
OF THE HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS
SECOND SESSION

ON

H. R. 9049, H. R. 8648, and S. 3177

DECLARING PORTIONS OF THE CHICAGO RIVER TO
BE NONNAVIGABLE

DECEMBER 15, 1921, MAY 19, 1922, AND
OCTOBER 6 AND 7, 1922



WASHINGTON
GOVERNMENT PRINTING OFFICE
1922

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE.

SIXTY-SEVENTH CONGRESS, SECOND SESSION.

HOUSE OF REPRESENTATIVES.

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BURTON E. SWEET, Iowa.

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SUBCOMMITTEE.

WILLIAM J. GRAHAM, Illinois.

EDWARD E. DENISON, Illinois.

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CHICAGO RIVER.

SUBCOMMITTEE OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Thursday, December 15, 1921.

The committee met at 10 o'clock a. m., Hon. Samuel E. Winslow (chairman) presiding.

The CHAIRMAN. The committee will be in order. We will call on H. R. 9049 and ask Mr. Graham to make a report on it.

(The bill follows:)

[H. R. 9049, Sixty-seventh Congress, first session.]

"A BILL Abandoning and declaring nonnavigable a portion of the west arm of the South Fork of the South Branch of the Chicago River.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all that portion of the west arm of the South Fork of the South Branch of the Chicago River lying between the east line of Ashland Avenue and a line seventy-five feet north of the north line of section five, township thirty-eight north, range fourteen east of the third principal meridian, in the city of Chicago, county of Cook, and State of Illinois, is hereby abandoned as navigable water and declared to be for all purposes not a navigable waterway of the United States, and the consent of Congress is hereby given for the filling and closing of same by the local authorities."

Mr. GRAHAM. After this bill was referred to me I communicated with the governor of Illinois and the mayor of the city of Chicago, asking them if they had any objection to the bill in question, and in each case inclosing a copy of the bill. I have an answer from Hon. C. R. Miller, director of the department of public works and buildings of the State of Illinois, which I will submit, together with other correspondence for incorporation in the record.

Mr. Miller in substance objects to the proposed work on the ground that he does not think it would be to the best interest of the public to fill the bed of the stream in question. He thinks that perhaps as a part of the waterway system of the State sometime this particular branch can be used for purposes of navigation to reach the stockyards. He also, in commenting on it, says that this immediate portion of the river may at this time be polluted by the discharge of sewage to an extent which is obnoxious; that this is a matter which can be and should be remedied by those responsible therefor without legislation which would permit acquirement by private interests of this valuable commercial right of way.

The mayor referred the matter to the corporation counsel, Mr. Samuel A. Ettelson. Mr. Ettelson replies to my inquiry and says: "The city has no objection to the proposed work."

(The letters referred to follow:)

STATE OF ILLINOIS,
OFFICE OF THE GOVERNOR,
Springfield, November 10, 1921.

MY DEAR CONGRESSMAN: Your letter of October 20, inclosing copy of H. R. 8648, was duly received and referred to Hon. C. R. Miller, director of public works and buildings, and W. L. Sackett, superintendent of waterways. I am inclosing herewith their report to me.

Yours very truly,

LENN SMALL.

Hon. W. J. GRAHAM,
House of Representatives, Washington, D. C.

STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS,
Springfield, November 1, 1921.

To: The governor.

Subject: Letter October 20, W. J. Graham, House of Representatives, inclosing H. R. 8648.

SIR: I beg to acknowledge receipt of letter of October 20, inclosing a copy of H. R. 8648, Sixty-seventh Congress, first session, "authorizing and declaring a portion of the west arm of the south fork of the South Branch of the Chicago River to be nonnavigable."

We are advised that this portion of the Chicago River has a width of from 150 to 200 feet and an average depth of water of from 14 to 18 feet. During the preceding administration we are advised that an application was made to fill a portion of the river in this vicinity and that a permit was given allowing this to be done with the condition that the made land should be utilized entirely for public purposes. Those interested in getting this permit said there would be no further effort made to close the portion of the river covered in the bill you submit to me.

The State of Illinois is engaged in the improvement of the Des Plaines and Illinois Rivers in order to make possible continuing navigation for commercial fleets from the Mississippi River to the Lakes.

An expenditure of \$20,000,000 has been authorized for this purpose.

The portion of the Chicago River referred to in the bill which you send me makes possible navigation to the stockyards and manufacturing districts in that vicinity, and when the State work is completed, so that fleets may navigate between the Mississippi River and the Lakes, it is probable all available navigable portions of the Chicago River will be required to handle the commerce which we are advised there is every reason to believe will navigate through these waters.

In view of a recent decision of the United States Supreme Court conserving public interests in streams we are advised the passage of this bill is liable to make private interests paramount to public interests and public control, and therefore we do not believe it is at this time in the public interest that this proposed bill should become a law, in view of the work now in progress by the State of Illinois to make continuing navigation possible between the Lakes and the Gulf.

This immediate portion of the river may at this time be polluted by the discharge of sewage to an extent which is obnoxious, but this is a matter which can be and should be remedied by those responsible therefor without legislation which would permit acquirement by private interests of this valuable commercial right of way.

Respectfully,

C. R. MILLER,
Director Department of Public Works and Buildings.

W. L. SACKETT,
Superintendent of Waterways.

CITY OF CHICAGO,
LAW DEPARTMENT,
November 14, 1921.

HON. W. J. GRAHAM,
House of Representatives, Washington, D. C.

MY DEAR MR. GRAHAM: The mayor has referred to me your letter in reference to H. R. 8648.

I have taken this matter up with the different departments of the city government and find no reasons why this bill should not be enacted into law.

SAMUEL A. ETELSON.

MR. GRAHAM, There was also submitted to me by Mr. Rainey a blue print and plat of the proposed improvements, and it appears from an inspection of it and from what I can learn that all the land owners surrounding the stream in question are agreeable to the proposition except two, who for some reason are opposing it.

So far as I can learn from personal inspection, and what I can learn about the matter, the place at present is a bad place. It is practically a cesspool. I

had not supposed there would be any opposition to it. I do not know anything about the matter except what I have presented. I think the committee, Mr. Chairman, should hear Mr. Rainey, and personally I have no reason for urging that this ought not to be done. The two letters are here; they seem to be contradictory, the governor on one side making one contention, and the city on the other hand agreeing that the bill should be enacted.

THE CHAIRMAN. Would you concur in the view that as the governor does object, and there are other objections, the bill at least should have further hearing?

MR. GRAHAM, I think it should.

THE CHAIRMAN. And in that case I think in justice to those who have been brought here we ought to take it up at a later time. I am sorry to interrupt you, Mr. Rainey, but there are others here who have been here for a couple of weeks, and I think I can say for the committee that we will give it reasonably prompt consideration.

MR. RAINY of Illinois. For which I am duly appreciative; and you are not interrupting me at all.

THE CHAIRMAN. Perhaps the committee may find time in a few days, as long as this matter is up, to get it out of the way. We will try to do the best we can.

MR. RAINY of Illinois. Thank you, Mr. Chairman.

THE CHAIRMAN. Meanwhile we will withhold a report until we go further into the matter.

(Whereupon the committee proceeded to the consideration of other business.)

SUBCOMMITTEE OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Friday, May 19, 1922.

The subcommittee met at 2.30 o'clock p. m., Hon. William J. Graham (chairman) presiding.

Present: Messrs. Parker, Graham, and Lea.

MR. GRAHAM, Mr. Rainey, this subcommittee has been appointed for the purpose of hearing such statements as you gentlemen want to make in passing on this bill (H. R. 8648) one way or the other:

"[H. R. 8648, Sixty-seventh Congress, first session.]

"A BILL Authorizing and declaring a portion of the west arm of the South Fork of the South Branch of the Chicago River to be nonnavigable.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the section of the west arm of the South Fork of the South Branch of the Chicago River (known as Bubbly Creek), between Ashland Avenue and the north line of Thirty-ninth Street, in the city of Chicago and State of Illinois, is hereby declared to be not a navigable waterway of the United States within the meaning of the laws enacted by Congress for the protection of such waterways.

"SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved."

Do you care to make any statement yourself?

STATEMENT OF HON. JOHN W. RAINY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ILLINOIS.

MR. RAINY. No; we have Mr. Heide, from Chicago, here, who is secretary of the Pershing Road Association. He is also manager of the International Live Stock Association and president of the Illinois State Fair. He is more familiar with this matter than myself or Congressman Sproul. All I want to say is that the stream we are anxious to close has been an eyesore in the community for years, and for 20 years there has been no navigation in the stream. It is insanitary, it is unhealthful, and all the people out there are very anxious to have it filled in. We have no outlet from Thirty-fifth to Forty-seventh Streets, about 13 miles; and in through the stockyards each morning I presume, pour from 100,000 to 150,000 people. By opening up Pershing Road, running through from where it stops now at Halstead Street to the other side of the city limits, an avenue of transportation for all the laboring people up

there and for all the employees of the stockyards will be established. All the associations are back of the Pershing Road Association in its desire to have this polluted stream closed. There has been some objection. I think a couple of women out there who live in California have objected to this, but that is the only objection I have heard of. There is a unanimity of opinion back there that this stream should be closed. Mr. Heide came from Chicago, and I will present him to you and ask your indulgence. We are grateful for the opportunity of presenting our case.

STATEMENT OF MR. B. H. HEIDE, OF CHICAGO, ILL.

Mr. GRAHAM. Mr. Heide, we will be glad to hear you. Just give your name and make such statement as you care to make. Have you any official connection with any bodies that you may represent?

Mr. HEIDE. This association, the Pershing Road Association, of which I am secretary, exists for the purpose of promoting the building of Pershing Road, formerly referred to as Thirty-ninth Street. The Pershing Road Association is an organization with which are associated the Greater Thirty-ninth Street Association, of which the Hon. Martin B. Madden is president; the West Thirty-ninth Street Improvement Association, of which Mr. Mollan, who, however, passed away recently, was president; the Oakland Business Association, of which Mr. H. C. Dana is president; the Southside Business Men's Association, of which Mr. Henry V. Olchener is president; the West Side Business Men's Association, of which Mr. Louis T. Jamme is president; and several other civic organizations banded together and formed this Pershing Road Association, which, as stated before, has as its chief mission the building of a road from the lake—Lake Michigan—to the proposed or planned zoological gardens just outside of the western limits of Chicago.

Mr. GRAHAM. We have before us a map. About where is that?

Mr. HEIDE. The zoo will be right beyond Riverside. Here is a map showing the entire road as proposed.

Mr. GRAHAM. About where is Bubbly Creek?

Mr. HEIDE. Bubbly Creek is right here [indicating]. There is a break at Halsted Street at the present time and then there are other breaks, but what we are endeavoring to do now is to remove the last obstacles that stand in the way of the building of this road, and one of the obstacles is Bubbly Creek. There is a small section from Ashland Avenue to the north line of Thirty-ninth Street that should be filled. The claim has been made at different times that this is navigable, but you can judge about that for yourself [submits photographs].

Mr. RAINY. So the committee may understand, at Halsted Street, Thirty-ninth Street stops now, and our idea is to go west and run Pershing Road—

Mr. SPOUL (interposing). No; we run to Western Avenue; that is, we start at Ashland Avenue and run to Western. There is a piece left out between Halsted and Ashland, but they are closing that now.

Mr. GRAHAM. Mr. Heide, let me see if I have this right.

You desire to close that portion of Bubbly Creek or the west fork of the south branch that lies between Ashland Avenue and Thirty-ninth Street.

Mr. HEIDE. Yes.

Mr. GRAHAM. And in that way you can build your road down Thirty-ninth Street without a bridge across this creek.

Mr. HEIDE. Yes, sir. The street is to be 108 feet wide, and if that is not done it will necessitate the building of a bridge that will cost a quarter of a million dollars, which the taxpayers will have to pay; and in addition to that, it will require the expenditure of approximately \$20,000 a year to man the bridge, not to speak of keeping it in condition, for the sole purpose of turning it occasionally to be oiled; that is all, because this can not be used for any purpose, and what is more, the property owners do not want to use it.

Mr. GRAHAM. Is there a bridge now at Thirty-ninth Street over this creek?

Mr. HEIDE. No; there is no bridge.

Mr. GRAHAM. Thirty-ninth Street does not extend over it at all?

Mr. HEIDE. No.

Mr. GRAHAM. Where is the nearest bridge over this stream?

Mr. HEIDE. A railroad bridge at Iron Street.

Mr. GRAHAM. Where is the nearest wagon bridge?

Mr. HEIDE. The Iron Street Bridge is a wagon and railroad bridge, both.

Mr. GRAHAM. Then is there a bridge on Ashland Avenue?

Mr. HEIDE. There is no bridge there. That is the end of the creek.

Mr. GRAHAM. How far have you built your Pershing Highway now, or is any of it built?

Mr. HEIDE. No; none of it is built as yet. We are simply removing the obstacles that stand in the way of the construction of the road.

Mr. GRAHAM. The stockyards slip is located also on Thirty-ninth Street?

Mr. HEIDE. Yes.

Mr. GRAHAM. Now, what is being done with that?

Mr. HEIDE. That is being closed up now. That was declared not a navigable stream.

Mr. GRAHAM. It never was a navigable stream?

Mr. HEIDE. No; it never was.

Mr. GRAHAM. And there was no congressional action necessary?

Mr. HEIDE. No, sir.

Mr. GRAHAM. But, as I understand, the stockyards slip was an artificial ditch built from Halstead Street west to its intersection with the river on Thirty-ninth Street?

Mr. HEIDE. With Bubbly Creek; yes.

Mr. GRAHAM. Are they filling it now?

Mr. HEIDE. They have dug a diversion channel. It is the intention to divert the stream into this channel and then build a 28-foot sewer through the bed of this stockyards slip, which is to carry off the waste and sewage from the south side of Chicago down the stream, and then as soon as that sewer is completed the street will be built over that 28-foot sewer. I am told that the contracts were probably let yesterday, because I was informed that the matter would be taken up then by the drainage trustees. That will close the stockyards slip.

Mr. GRAHAM. Will the diversion channel be filled up?

Mr. HEIDE. When the sewer is completed, the diversion channel will be filled up again and the river turned into the sewer.

Mr. GRAHAM. However, the slip will be kept open from this point near Iron Street down to its intersection with Thirty-ninth Street?

Mr. HEIDE. I think they are endeavoring to close up all of this so that this mammoth sewer will enter into the south branch of the Chicago River.

Mr. GRAHAM. There is no effort being made to fill the west fork from Thirty-ninth Street north, is there?

Mr. HEIDE. No; and no effort, as far as I know, will be made. All the Pershing Road Association is interested in is to obviate the necessity of building a bridge at Thirty-ninth Street.

Mr. GRAHAM. Can you build your road through the stockyards there?

Mr. HEIDE. Yes; of course, several buildings will have to be cut away, but that can all be done.

Mr. GRAHAM. Do you have any arrangements with the stockyards company to that effect?

Mr. HEIDE. The stockyards company does not own this property where buildings will have to be cut away, but the packers. I understand, stand ready to give their consent.

Mr. GRAHAM. Do you have the power of eminent domain? Can you condemn land?

Mr. HEIDE. No.

Mr. GRAHAM. It is just a private association, is it?

Mr. HEIDE. Yes.

Mr. GRAHAM. How would you get through there if you struck somebody who did not want you to go through?

Mr. HEIDE. Well, the city will handle that. The city will have to condemn.

Mr. GRAHAM. Now, take this property here [indicating]. Some people by the name of Leitch have some frontage there and are protesting very vigorously against this being filled in. You will have to condemn their property, will you not?

Mr. HEIDE. No; that will not have anything to do with it.

Mr. GRAHAM. You will have to pay damages for filling up their frontage on the river or somebody will have to pay that.

Mr. HEIDE. They will naturally gain some of that made land in front of their property.

Mr. GRAHAM. But they have a right to claim damage, Mr. Heide, if they want to.

Mr. HEIDE. Then the city, of course, will settle with them. They only have 160 feet frontage.

Mr. LEA. Does the proposed Pershing Boulevard follow the line of Bubby Creek?

Mr. HEIDE. No; it is to go straight through.

Mr. LEA. You do not intend to assume the burden of filling this section [indicating]?

Mr. HEIDE. No. You know how it is in great cities where there is a lot of rubbish. These places are automatically filled up very quickly.

Mr. LEA. Are there any warehouses along this portion of Bubby Creek which is proposed to be abandoned?

Mr. HEIDE. No.

Mr. PARKER. There are some docks there on one side or the other, are there not?

Mr. HEIDE. No, sir.

Mr. GRAHAM. The parties who are opposing this have sent a great mass of matter here and among other things they have sent a picture. Here is what is called Hine Bros' property, lot No. 4, and here is the Leitch property with a large barge lying alongside of a dock there.

Mr. HEIDE. That must have been taken 20 years ago because—

Mr. PARKER. The picture is dated 1916.

Mr. GRAHAM. And this one is dated May 4, 1918.

Mr. HEIDE. I can not imagine how that can be. I never saw any such thing in there. I did notice such obstructions as this.

Mr. GRAHAM. That is a sunken rock.

Mr. HEIDE. That is right in the middle of the stream, and there are some more projections. I do not know how they succeeded in getting that barge in there, I confess. Here is another barge that is shown on this picture and possibly that is the barge, too. [Pointing to obstructions apparently the sunken wreck of a barge.]

Mr. GRAHAM. Well, there is quite a change in its condition.

Mr. HEIDE. This was taken Tuesday evening of this week and that is probably the same barge.

Mr. LEA. No; the other barge has steam up.

Mr. GRAHAM. We also have a number of letters and one thing and another that we will introduce later.

Now, have I got this right, Mr. Heide: The principal object you gentlemen have in mind is that you want to build this road and you do not want an expensive bridge there to maintain.

Mr. HEIDE. That is the idea.

Mr. GRAHAM. If it was not for the bridge you would not care anything particularly about this except from its sanitary aspect.

Mr. HEIDE. Yes; of course, there is the sanitary aspect of it. What we are mainly interested in is to prevent the necessity for building and maintaining a bridge over an absolutely useless appendage.

Mr. RAINEY. But the people there who are members of your association are also interested in having that closed on account of the insanitary condition that exists there.

Mr. HEIDE. Yes; of course.

Mr. LEA. What would become of this water after you close the outlet?

Mr. HEIDE. The water would naturally push out as the creek is filled in.

Mr. LEA. At present, as I understand it, it has an open outlet here for drainage, but when you build your embankment across there that will deprive it of any drainage and it will become a stagnant pond.

Mr. HEIDE. Whatever is necessary will be taken care of by the city. If it is necessary to construct a sewer, that will be done, which would be infinitely cheaper than the maintenance of a quarter of a million dollar bridge.

Mr. LEA. It would still be dead water even if you had a sewer, because you have your level here and you can not drain it, because it is already at water level. You do not propose to fill this in, do you?

Mr. HEIDE. Yes; this section from Ashland Avenue to this point. [Indicating Thirty-ninth Street.]

Mr. LEA. You assume the burden of filling that?

Mr. HEIDE. That will be taken care of; yes.

Mr. GRAHAM. Let me ask you this question: Is the boundary line of these lots along here the water line? Where does the title run to—the water line?

Mr. RAINEY. Yes.

Mr. GRAHAM. Was it surveyed that way originally?

Mr. RAINEY. I think it was.

Mr. GRAHAM. Fractional lots?

Mr. HEIDE. Yes.

Mr. GRAHAM. Now, the bed of the river belongs to the State of Illinois?

Mr. HEIDE. No; I do not see what claim the State would have.

Mr. GRAHAM. The beds of navigable streams that are reclaimed belong to the respective States, do they not?

Mr. RAINEY. Yes; I think you are correct in that suggestion.

Mr. GRAHAM. Was not that the holding of the Chipperfield commission in our State some years ago?

Mr. RAINEY. I am not familiar with that decision.

Mr. GRAHAM. Now, if you do shut this section off, what have you got to do now to fill that against the protests of landowners? That is the question.

Mr. SPROUL. There are only two landowners who are protesting, and they only have about 160 feet.

Mr. GRAHAM. Suppose they insist upon their rights, Mr. Sproul, what will you do to take care of that?

Mr. SPROUL. I suppose they will have to be taken care of. They could be taken care of now, I have no doubt, if we paid them enough.

Mr. GRAHAM. I know; but I am thinking of it from a legal standpoint and wondering just exactly what will happen. If you get the consent of Congress now, declaring that to be a nonnavigable stream, then you want to fill it up. It is not a street, it is private property, and it will go to the riparian owners—that is, the owners of the lots on each side to the middle of the stream—when you declare it to be nonnavigable. How are you going to fill it if they do not want you to?

Mr. SPROUL. If they are damaged they have a right against the city. I do not see how it could be held legal for a party to hold up a tremendous improvement like that with 110 feet of ground. They have their action in court.

Mr. LEA. They have their right, of which they can not be deprived except by some legal process.

Mr. SPROUL. By due process.

Mr. LEA. And their remedy would be whatever damages the court awarded. Mr. GRAHAM. The moment they built the grade of the street across that river there, then they could sue for damages.

Mr. RAINEY. The city would condemn that, would they not?

Mr. GRAHAM. They would if they took that piece of land; but I do not even know that they would want it.

Mr. SPROUL. There is nobody getting any more benefit out of it than the Government is getting.

Mr. GRAHAM. Go ahead, Mr. Heide, and show us about your highway—what its purpose is, and so on.

Mr. HEIDE (indicating on picture). The highway runs by these immense Government warehouses. From Ashland Avenue westward for some distance it is completed and in splendid condition. The Government warehouses were constructed at an expense of, I think, about \$8,000,000.

Mr. SPROUL. Probably a little more than that, but not less than \$8,000,000.

Mr. HEIDE. The officer in charge there wrote some time ago expressing himself as favoring the early building of Pershing Road, and stated in part as follows:

"This office is very desirous of assisting in putting through the project of a thoroughfare on Thirty-ninth Street, and this letter is written to you with a view toward getting your assistance in putting through the proposed street car line. It would be difficult to estimate the advantage that this project would be to the Government as estimated by this office, situated on Thirty-ninth Street between Ashland Avenue and Robey Street, on account of the accessibility which would be furnished this depot. At the present time there are 3,200 employees working in this depot, the great majority of whom are compelled to come to work now by way of Thirty-fifth Street or Forty-seventh Street. The car lines, as you know, are densely crowded during the rush hours of the morn-

ing and evening, and by putting through Thirty-ninth Street (Pershing Road) it would be of great benefit to the employees."

The date of that letter was January 29, 1920.

Mr. GRAHAM. How many men are working in the depot now?

Mr. HEIDE. Well, I have not any idea.

Mr. SPROUL. I think about a thousand, Mr. Graham.

Mr. HEIDE. About 1,000 to 1,200.

Mr. GRAHAM. And it is a quartermaster's depot?

Mr. HEIDE. Yes; a quartermaster's depot.

Mr. GRAHAM. And full of supplies of various kinds?

Mr. HEIDE. Yes.

Mr. GRAHAM. How far west of the proposed location of this fill is this depot?

Mr. RAINEY. It starts right at Ashland Avenue and runs to Robey Street on the west.

Mr. GRAHAM. So that it is just west of it?

Mr. HEIDE. Yes.

Mr. GRAHAM. What is the particular advantage to the Government of getting east to Lake Michigan on that road?

Mr. HEIDE. It would enable the employees and those who desire to reach the depot to come more direct and with less trouble.

Mr. RAINEY. You see, one car line is at Thirty-fifth Street and the other at Forty-seventh Street.

Mr. HEIDE. A mile and a half apart; and those from a point east of the yards are obliged to come around Thirty-ninth Street or around Forty-seventh Street in order to get to the depot, often necessitating their transferring twice or three times on the street cars in order to get to the depot. That is why they are interested. Aside from that, that cesspool is right under their windows, practically.

Mr. SPROUL. That is McKinley Park there in the picture [indicating]?

Mr. RAINEY. Yes; north of Thirty-ninth Street.

Mr. GRAHAM. Here is what these people claim, in brief. They claim that they have a dock on their property—I am speaking of the Leitchs. They claim they have a dock that is used frequently, that there are a couple of steamers that run down in there. They claim in their letters that a considerable amount of property is shipped back and forth from their dock, and that the river down to their place is 17 feet deep to the end of this slip. I do not know whether they are right or not, but they send a set of soundings. They claim that this is being done for the purpose of helping the terminal railroad which serves the stockyards, and that the railroad has been protesting against this water remaining open in order to help themselves.

Mr. LEA. The railroad wants to run across?

Mr. GRAHAM. Yes, so they claim, to get rid of this water. They have a lot of statements of that kind which they make in their letters. That is not a serious thing with me, but here is a thing that I would like to have you gentlemen tell us something about—

Mr. RAINEY. Mr. Heide, to your knowledge has there been any tug or barge in that water in the last 10 or 20 years?

Mr. HEIDE. To my knowledge there has not been anything in there, not even a rowboat, for years, despite the fact that it is shown in that picture.

Mr. LEA. What has been your opportunity to observe? You live there, do you?

Mr. HEIDE. I am there all the time.

Mr. RAINEY. When I am at home I pass this particular spot every day in the week, and sometimes three or four times a day.

Mr. GRAHAM. Let me call your attention to this letter, Mr. Heide. I want your view about this. Here is a letter from Mr. C. R. Miller, director of the department of public works and buildings of the State of Illinois, written December 28, 1921, about this bill. He says this:

"Under the law of the State of Illinois, before any work of any character can be done in any of the streams of this State a permit from the State is necessary. Regardless of any action of Congress in this matter, this portion of the Chicago River could not be filled without a permit from the State."

"This portion of the Chicago River makes navigation possible into the stockyard district and that particular section of the river which you propose to fill has a depth of water ranging from 20 to 12 feet, with a width of approximately 150 feet."

"Two years ago, under a former administration, a permit was given to fill up a portion of the river east of the point that you now seek to fill up. A permit was given for this upon the representation of various interests and the city that it was necessary to do this for the purpose of projecting a street through this territory to connect with Thirty-ninth Street and give a thoroughfare in that portion of the city. At the time this matter was before the department for action it was specifically agreed that if the permit for filling the east portion was issued, that a viaduct would be constructed over the tracks at this point and a bridge over the portion of the river which you now seek to have declared nonnavigable for the sole purpose of filling it up."

"Naturally property owners along the stream may be desirous of having the river filled because it will materially add to their property holdings which are valuable. Notwithstanding this view on the part of some property owners, objections to this proposition have been before this department for nearly four years and the department is at present without any advice that the objectors have consented to filling up this part of the river."

"Aside from any individual interest in the matter, however, there seems to be a public interest which can not be ignored. The State of Illinois is engaged in the construction of a waterway, making possible navigation from Chicago to the Gulf. There has been in the last few months great effort on the part of various interests to fill up various portions of the Chicago River. If the Chicago River is to be filled up there is no use of the State of Illinois undertaking to improve 65 miles of river down State to make navigation possible between Chicago and the Gulf."

"In this particular instance this portion of the river affords a depth of water and a width and much better navigation than can be provided by the project down State and there are in the stockyards district and adjoining area, corporations and individuals desirous of water transportation and reduction of freight costs, and for this reason, by present view at least, is that this portion of the Chicago River should not be filled up and destroyed, and I do not believe the bill should pass."

"I am taking the liberty of sending a copy of this letter to Congressman Graham, who communicated with Governor Small about this when your former bill was under consideration, and also to the Chief of Engineers of the War Department for the information of that official."

That is the serious thing in my mind. I want to go as far as I can on this thing, because I appreciate the condition of that river, but in view of what the State Department says, what have you got to say about it?

Mr. HEIDE. I have for some time endeavored to induce Colonel Miller to make that trip with me to the creek, for the purpose of convincing him that he is mistaken. He admitted to me that the information that he had on the subject came from one of his subordinates, and that he himself had never been there, so he consented to go with me. But unfortunately—you are familiar with affairs up there—he is obliged to spend much of his time on other work. Last Wednesday afternoon I succeeded in getting him. He called up my office, and I immediately rushed downtown, but when we met we found that his superintendent of harbors and rivers—I think that is his title—was away attending the funeral of one of his relatives. So we were not able to make the trip that afternoon. He wanted his superintendent to be with him when he made the trip.

Judging from that letter, he has something entirely different in mind. When he speaks about railroads and bridges—there is no bridge there, there are no railroad tracks there, there is no railroad there that crosses it or touches that section of the river in any way. What interest could a railroad have in that part of the river, which is miles and miles away from the main channel in connection with which the \$65,000,000 for the deep waterway project is to be used?

This is a cesspool here—Bubbly Creek. What connection it can have with that beautiful dream of ours there in Chicago I can not imagine, and I told the colonel so last Wednesday. I asked him to give me a letter to you men stating that he had reconsidered the matter, but he said he did not feel justified in doing so until he had gone over the ground. He promised, however, to make that trip with me in the course of the next two weeks.

I know Colonel Miller very well, and have known him for many years, and I know that he will keep his promise, and he said that if it is at all possible

the moment he sees his way clear to give me such a letter he will certainly do so. But his man has reference to some other section of the stream where the railroads do cross, possibly here [indicating on plat]. Here the railroads touch it. There [indicating another point] they come close to it. But here, where the creek is to be filled, there are other property holdings in between. There are the Leitchs and the Heines and the Mechanical Manufacturing Co. They are all in between the railroad and the creek. They have an outlet connecting them with all the lines running west of Chicago, and I can not see what interest they would have in that very small section of the river when they could just as well move their tracks the other way. The whole thing seems strange and ridiculous to me. That is all I can say. The whole thing seems

Mr. GRAHAM. How long is that stretch of river there, Mr. Heide?

Mr. HEIDE. It is indicated here on the plat. If you care for it, I will leave that up.

Mr. GRAHAM. It is about 150 feet wide, they say.

Mr. HEIDE. In some sections it is just like a pond that spreads out over low ground. In other sections it is not nearly that wide, perhaps 75 feet.

Mr. GRAHAM. Is it a quarter of a mile long there?

Mr. HEIDE. No; it is about 1,300 feet on the south side, and I would judge about 900 feet on the north side.

Mr. HEIDE. Now, she speaks about powerful interests. Where are they? There is the Mechanical Manufacturing Co.—a small concern. They—the Leitchs—only hold 160 feet frontage on the creek as against all that other frontage held by others. All the others favor closing. Everybody in there seems to favor that improvement except those two ladies. I hate to think that they have ulterior motives, but it would seem so when they hold up such an important improvement like that, and want to force the taxpayers to pay a million dollars during the next 20 years to build and maintain a bridge there. It surely looks strange; that is all I can say.

Mr. GRAHAM. Mr. Parker, do you care to ask anything?

Mr. PARKER. No.

Mr. GRAHAM. Do you care to, Mr. Lea?

Mr. LEA. As to these two ladies that are objecting, where is their land located?

Mr. HEIDE [indicating on plat]. One hundred and fifty feet frontage.

Mr. LEA. That is a case of joint ownership?

Mr. HEIDE. I think they are two sisters, if I am not mistaken, who own that. The land was left to them, I think.

Mr. LEA. This stream is not part of that water connection between the lake and the Mississippi River, of course? It is on a collateral or tributary stream?

Mr. HEIDE. It is the southwest branch of the southwest branch of the South Branch of the Chicago River.

Congressman Madden is one of the vice presidents of this Pershing Road movement. He has been fighting this fight for years himself and has given it much of his personal attention.

Mr. GRAHAM. What would you think, Mr. Heide, of the advisability of this committee sending for Colonel Miller and having him come down here and give us his reasons?

Mr. HEIDE. I think that after he has gone over that ground he will be convinced that his man made a wrong kind of report. I am fully convinced of that, because Colonel Miller is a just and level-headed man.

Mr. LEA. Is it your impression that the bed of this stream belongs to private parties?

Mr. HEIDE. Well, I would judge that they would have riparian rights—I don't know—and that it might go to the adjoining property holders.

Mr. PARKER. I suppose you judge that from Colonel Miller's letter. He said that probably the adjoining property owners would acquire the extra land. He made that statement, I believe, in his letter.

Mr. GRAHAM. Do you think, Mr. Heide, that it would be a good plan to wait until you have a further conference with Mr. Miller before anything is done?

Mr. HEIDE. I think so.

Mr. RAINY. Yes; I think that would be a good idea. I think it would be wise for Mr. Heide to make whatever statement he cares to make and then let Colonel Miller give him that letter, or forward the letter here to the committee, or, if not, have Colonel Miller come down here before the committee.

Mr. GRAHAM. Mr. Heide, when did you fill the portion of the west fork of the south branch which is west of Ashland Avenue? When was that filled?

Mr. RAINY. Five or six years ago.

Mr. HEIDE. Yes; five or six years ago.

Mr. GRAHAM. Was there any consent of Congress given for that filling?

Mr. RAINY. Not at that time. I do not think they believed it was necessary. The matter was taken up, and they declared it was a nonnavigable stream, and therefore the Congress would have no control over it.

Mr. PARKER. He says in his letter it was two years ago.

Mr. HEIDE. That is wrong.

Mr. GRAHAM. I should judge from what Mr. Miller says in his letter that he claims it to be the law that the State of Illinois will have to consent to this before it is done.

Mr. RAINY. That is what he states in his letter. Our position is that we are willing to take our chances with the State if we can get the consent of Congress, because all of the five or six organizations up there and all of the people who know conditions as they exist are intensely interested in closing this up. It is a stench.

Mr. HEIDE. What is uppermost in the colonel's mind is to maintain the main channel as it is for his deep-waterway dream.

Mr. GRAHAM. He contends that if you leave this open and have commerce flowing from the Great Lakes to the Gulf it can go through all these little by-ways and waterways into every part of the city. That is evidently what he has in mind.

Mr. HEIDE. Yes.

Mr. GRAHAM. And that by filling this up you would be shutting off access to that much territory that might sometime want better service.

Mr. HEIDE. I went over that with him last Wednesday, and he told me that he had particularly in mind the slips on the main channel, which would serve as depots or, rather, great freight houses, so to speak, for the material that is to be shipped down the deep waterway. That is the way he explained it to me; he, therefore, did not have this in mind so much.

Mr. LEA. Then, as I understand, the situation is practically this: These people claim they have a water frontage right there that is valuable for shipping purposes and which they do not want destroyed by this causeway across the stream. That is all there is to that?

Mr. HEIDE. If there ever was a boat unloaded there, I never saw one. I have been around the yards practically all my life, at least 35 years, and I never saw a boat in that particular section of the slip.

Mr. RAINY. I do not see how a boat can get in there.

Mr. HEIDE. I positively know there is not any freight being unloaded there; that it is not a depot for the loading or unloading of freight.

Mr. GRAHAM. Is there anything else, gentlemen?

Mr. RAINY. Is there any other statement you desire to make, Mr. Heide?

Mr. HEIDE. As far as I know, I believe I have covered the ground.

Mr. GRAHAM. Have you any exhibits that you want to leave with us?

Mr. HEIDE. I can leave that blue print showing you how much frontage the objecting parties have there—160 feet.

Mr. GRAHAM. Yes; I think you had better leave that. Can you also leave this plat?

Mr. HEIDE. I can leave that also. Of course, that is not definite. The Chicago Plan Commission engineers are now working on this matter. That is, the route has not been definitely fixed in the outlying district, where the road is to cross the drainage canal.

Mr. GRAHAM. Well, it is all a city improvement? It is a part of the boulevard system?

Mr. HEIDE. Yes. One of the McCormicks—some relative of the Senator, I think—has got a plot of ground to the west for a "zoo," and it is to connect the lake with the zoo. That is the idea.

Mr. GRAHAM. All right. We will take the matter under consideration, and I imagine the best thing for us to do now would be to wait and give you a chance to confer further with Colonel Miller. That will probably require a couple of weeks, will it?

Mr. HEIDE. I think so.

Mr. SPROUT. They are very anxious to get this settled and a bill passed before Congress adjourns.

(Whereupon, at 3.30 o'clock p. m., the committee adjourned subject to the call of the chairman.)

SUBCOMMITTEE OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
Chicago, Ill., Friday, October 6, 1922.

The subcommittee met at 2 o'clock p. m.

Present: Mr. Denison and Mr. Graham.

Mr. GRAHAM. The committee has before it two separate propositions, one having to do with the part of the Chicago River popularly known as Bubbly Creek, and the other a portion of the South Branch, extending west from the junction of the sanitary district canal. The committee has decided that it is advisable, in view of the necessity of economizing time, to take up the Bubbly Creek proposition first and dispose of the evidence on that matter before taking up the other proposition. It is also necessary, I might state, to expedite the matter as much as possible. The witnesses who appear will be asked to make statements such as they care to make explanatory of the matter and to make them as brief as possible and avoid duplications. For instance, where there is any particular interest that wants to appear in favor of or against the bill, if it can be done by the statement of one person, it is highly advisable to do so. It saves time and saves money and expedites the matter.

With that in mind, we will start our hearings and I hope it will not be necessary for the committee at any time to limit the time of any witnesses. Mr. Heide, whom you will have heard first in this matter.

Mr. BLACK. Mr. Graham, I am here representing the Pershing Road Association.

STATEMENT OF MR. JOHN D. BLACK, ATTORNEY AT LAW, REPRESENTING THE PERSHING ROAD ASSOCIATION AND THE CENTRAL MANUFACTURING DISTRICT, 1400 FIRST NATIONAL BANK BUILDING, CHICAGO, ILL.

Mr. BLACK. Mr. Chairman, I am representing here the Pershing Road Association and other interests and associations interested in the opening of the Pershing Road and the passage of this bill. I know that the committee is familiar with the territory and with much of the reasons that have already been presented to the committee at Washington for the passage of the bill and for the declaring of this stream unnavigable. I have witnesses here from the various associations who can tell what their opinion is and what the facts are with respect to this bill, and if Mr. Shanahan is here, I should like to call him first.

STATEMENT OF MR. DAVID E. SHANAHAN, CHICAGO, ILL.

Mr. SHANAHAN. For about 20 years the people living in the west end of the fifth ward of the city of Chicago, now known as the new twelfth ward, have been trying to have Thirty-ninth Street opened up so that they could reach the east end of the city, over toward Lake Michigan. The aldermen representing those wards have at different times attempted to have the street opened through and have urged the Chicago City Railway Co., now the Chicago surface lines, to extend the Thirty-ninth Street car line, which now runs from the lake on Thirty-ninth Street, extended through across the river, over on the west end of Thirty-ninth Street out to the drainage canal. When we first attempted to do this the packing interests and the Union Stockyards were very violently opposed to extending Thirty-ninth Street from Ashland Avenue to Halsted Street. Part of Thirty-ninth Street has been for a number of years a waterway—a canal. Part of it was originally an old stream, but brickyards were placed along there and they dug out the channel and made a canal up to Halsted Street. Thirty-ninth Street originally was a town road. Many years ago these interests had the old town of Lake officials vacate the street at a point between Ashland Avenue and Halsted Street, so that it has been closed.

Of late years the sentiment has been so strong for the opening of that street that the Union Stockyards people and the packing interests have joined with the people over there in opening up the street in order that the street cars might be extended to the west end of the city.

In the last two years the Pershing Road Association has been organized, and I through various civic associations in the city an attempt is being made to make that street a boulevard to connect with the new Zoological Gardens out on the Des Plaines River. If you gentlemen visited the territory this morning

you noticed there is a bridge at Thirty-fifth Street, going over the river, on which there is a car line. There is a car line on Forty-seventh Street. There is a mile and a half between these streets where it is impossible for the people on the west end or the people living on the east end to go in the other direction without first going over to either Thirty-fifth Street or Forty-seventh Street, and then going north or south to go into that great manufacturing and stockyards district. If Thirty-ninth Street was opened through and a car line extended there, it would serve that entire territory and would give the people in the east end and the people in the west end a chance to get in there, especially the working people who work in that locality.

Last year the State and the Government granted authority to close that part of the channel from Halsted Street to a point west of Racine Avenue, and work is being done there now by the sanitary districts; and now we find that unless that part of the channel from Ashland Avenue east, about 1,000 feet, is closed it will be necessary for the city of Chicago to erect a bridge over Thirty-ninth Street extended at a cost of \$2,000,000 or \$3,000,000 dollars, and it will mean a cost of \$7,000 or \$8,000 a year to the city to maintain a bridge which never will be used. The Government will insist on having a swing or a lift bridge there. The taxpayers feel that is an unnecessary expense; that that end of the channel will not be used for navigation, and feel that authority ought to be granted to the city of Chicago to close that part of the channel in order that Pershing Road—Thirty-ninth Street—may be extended through.

I have lived there all my life. I know how the people feel over there and I know the necessity of this improvement, and I know it will be absolutely useless and a waste of public money to erect and maintain a bridge at that point.

Mr. GRAHAM. Mr. Shanahan, did you ever know of any navigation on that portion of the stream?

Mr. SHANAHAN. At one time; yes; many, many years ago.

Mr. GRAHAM. What sort of navigation?

Mr. SHANAHAN. Well, I would say there were some scows that went up there with wood to the brickyards that were along the channel.

Mr. GRAHAM. Was this channel partially artificial?

Mr. SHANAHAN. Yes.

Mr. GRAHAM. Dug out to get clay for brickmaking?

Mr. SHANAHAN. Well, I am not certain whether there were any brickyards on that part of the channel south of Thirty-ninth Street and east of Ashland Avenue. West of Ashland Avenue, where the channel was and where it is now filled in, there were a number of brickyards.

Mr. GRAHAM. You think it has been 25 years since there has been any navigation there to amount to anything?

Mr. SHANAHAN. I do not believe there has been any navigation on there in 25 years.

Mr. GRAHAM. I noticed down there this morning the remains of some scows and old boats lying along in there.

Mr. SHANAHAN. Yes.

Mr. GRAHAM. They have been in there a long time, I suppose.

Mr. SHANAHAN. Yes, sir.

Mr. DENISON. I want to ask you, Mr. Shanahan, with reference to the actual bed of the stream, unless you have or know of some engineer who is going to testify here who would perhaps know more about it than you do, do you know whether there is an engineer here who is going to testify about that matter?

Mr. SHANAHAN. I do not know, but I think so.

Mr. BLACK. I can answer that question. I have here the blue prints—

Mr. DENISON. I do not want to ask the question now because I want first to get through with Mr. Shanahan. I just wanted to know if somebody was going to testify about that.

Mr. BLACK. Yes, we have the soundings and blue prints of the situation there.

Mr. DENISON. I would like to ask you this question, Mr. Shanahan: On what street is this so-called Bubbly Creek closed now?

Mr. SHANAHAN. From Halsted Street west to a point a few hundred feet west of Racine Avenue. It is Thirty-ninth Street and it is closed there and is now being filled in.

Mr. DENISON. How long has it been closed?

Mr. SHANAHAN. Well, I think work on it began two years ago at about this time.

Mr. DENISON. The bulkhead then is Ashland Avenue?

Mr. SHANAHAN. No; the bulkhead is about two or three hundred feet west of Racine Avenue. You see the channel started at Halsted Street and came along west in Thirty-ninth Street and then went into the river going north, and this other part of the channel goes southwest down toward Ashland Avenue. Thirty-ninth Street would cross that part of the channel going southwest to Ashland Avenue. Is there a map here?

Mr. BLACK. Yes; here is a map of that, Mr. Shanahan.

Mr. SHANAHAN. There was an old channel from Halsted Street. This part here [indicating] was the old channel. It is closed.

Mr. DENISON. What street is this at the end of the present channel?

Mr. SHANAHAN. That is Racine Avenue. Thirty-ninth Street would be extended through here about 600 feet and would go up the branch of the river running southwest to Ashland Avenue. Originally it extended west, and has been closed and the bridge taken off Ashland Avenue. Now, if this is not closed here it will be necessary for the city of Chicago to erect a bridge at that point over this channel and also to maintain it.

Mr. DENISON. This south fork, then, that is now called Bubbly Creek stops at Ashland Avenue?

Mr. SHANAHAN. Yes, sir.

Mr. DENISON. When was the bridge taken out of Ashland Avenue and that part closed?

Mr. SHANAHAN. I would judge about 10 years ago. I would not be certain as to that.

Mr. DENISON. Was that done by act of Congress or with the consent of Congress?

Mr. SHANAHAN. I think there was the consent of the city and the State for it. I am not certain whether there was congressional action on it or not.

Mr. BLACK. I do not understand there was any congressional action on it, but there was permission of the Secretary of War given to remove the bridge and also for the closing of the stream there.

Mr. SHANAHAN. Our particular interest is to have this street opened in order that the people living over here will have an opportunity to go over to their employment in the east end of the city, and people living in the east end will have an opportunity to go over here to this great industrial district for employment.

Mr. DENISON. As I understand it, Mr. Shanahan, you now have a stub end of the south fork of the river ending at Ashland Avenue, and what you want to do by this bill is to cut off about 1,000 feet of the stub and close it at Thirty-ninth Street.

Mr. SHANAHAN. On the north side of Thirty-ninth Street.

Mr. BLACK. Mr. Chairman, may I ask Mr. Shanahan a question or two for the record?

Mr. GRAHAM. Certainly.

Mr. BLACK. Mr. Shanahan, I do not think you stated what your representation of these people is and what you have been down there. You have been State representative from that territory for how many years?

Mr. SHANAHAN. Very nigh 30 years.

Mr. BLACK. And you live in that district?

Mr. SHANAHAN. I have lived in that district all my life.

Mr. BLACK. Let me ask you this question: There is a chart here, prepared in 1884 by E. C. Davidson, a directory and chart of the industries on the Chicago River, which shows the J. F. Whiting brickyards, between Thirty-ninth Street and Ashland Avenue, on the north side of this proposed closing; do you remember when the Whiting brickyard was there?

Mr. SHANAHAN. Well, I remember the Whiting brickyard was up there; but I could not remember the exact point.

Mr. BLACK. And on the east side of this proposed closing was the H. L. Harlan brickyard; you remember that one also?

Mr. SHANAHAN. Yes, sir.

Mr. BLACK. That was back as far as 40 years ago?

Mr. SHANAHAN. In the late seventies.

Mr. GRAHAM. I think that is all, Mr. Shanahan, and we are much obliged to you.

I should have stated a moment ago that, after hearing the proponents of the measure, we would then give an opportunity to such persons as are opposed to the measure to be heard.

STATEMENT OF MR. EDWARD E. MAXWELL, PRESIDENT OF THE PERSHING ROAD ASSOCIATION, CHICAGO, ILL.

Mr. GRAHAM. Mr. Maxwell, you may proceed and make such statement as you desire.

Mr. MAXWELL. The Pershing Road Association feel that Thirty-ninth Street should be extended through there for the general benefit of the public. For those who are living just immediately west of the stockyards there is no opening through there for traffic for a distance of about a mile and a half between Thirty-fifth and Forty-seventh Streets. Since the city has gone to the extent it has—and my business in that district gives me a very adequate knowledge of the amount of traffic there is across Thirty-fifth Street, many of these people have to be switched off on Thirty-ninth Street at Ashland Avenue.

Mr. GRAHAM. Let me ask you a question at that point, if it does not break into the current of your remarks: We observed east of the river there a reduction works that we were told belongs to the city. That is a very narrow portion of the stream there. Would it be possible to lay a street of the average width through there, so that Thirty-ninth Street could be continued as a wide thoroughfare as it is west of the river?

Mr. MAXWELL. There will have to be some condemnation there in order to make a wide street.

Mr. GRAHAM. Would the city reduction works have to be removed, or any part of them?

Mr. MAXWELL. That point we have not yet taken up thoroughly. Mr. Graham. Mr. GRAHAM. Of course, as far as this committee is concerned, we are concerned principally with the rights of the Federal Government and the availability of this water for purposes of navigation, but the thought occurred to me that it might be somewhat doubtful, without further steps being taken by the community, whether such a highway could be built through there as planned. I observed the reduction works and other buildings on the south, which make a narrow constriction of the street there, and I assume something will have to be done there in order to make it the necessary width.

Mr. MAXWELL. As the matter proceeds to its completion we shall have to do a certain amount of condemnation there.

Mr. BLACK. That will be done as all the Chicago plan widening has been done, Mr. Graham, by condemnation.

Mr. GRAHAM. Now, here is another suggestion: Suppose you build an embankment or bulkhead through there; what will become of the refuse or water that escapes from the reduction works? Is there not a large amount of water or other material thrown off there from those works?

Mr. MAXWELL. That will have to be provided for in the way of sewers.

Mr. GRAHAM. At present it drains into Bubbly Creek, does it not?

Mr. MAXWELL. Yes, sir; at the present time. I do not know whether they stopped to show you the head of the west end of Thirty-ninth Street and Halstead, but they are now working on diverting the present current so as to put in a closed sewer there, continuing the 28-foot sewer now under Thirty-ninth Street.

Mr. GRAHAM. Let us go a little beyond the reduction works. How is the street east of that point? Is it of the same width as the street west of the river? After you get past the reduction works, does it widen out again?

Mr. MAXWELL. Yes, sir.

Mr. GRAHAM. To what width?

Mr. MAXWELL. I think it is a 60-foot driveway east of Halstead.

Mr. GRAHAM. And it then runs at that same width to the lake?

Mr. MAXWELL. Clear to the lake. You asked in regard to the sewer there—the drainage board is now putting in a bulkhead there and spending, I think, somewhere in the neighborhood of \$1,000,000 in covering up what was formerly known as the stockyards slip. We worked on that for quite a while and had to get the consent of the property owners there to use that, but that was never taken up as a navigable stream because it was shown that that was artificial, and as I understand it, a large part of this to the west was made in the same way from the brickyards, so that the natural stream was never a real stream. It is a question of the greatest good for the greatest number and this is absolutely essential because that district west of Ashland Avenue is growing very rapidly. It is becoming a very large industrial district all the way west there, and not only industrial but there are many homes there.

There are some very large works out there that employ a great many people who live east of Halstead Street.

Mr. GRAHAM. Does the city run barges or boats down to the reduction works?

Mr. MAXWELL. Occasionally they do, but most of that garbage is taken in by wagon.

Mr. GRAHAM. Vessels of what draft?

Mr. MAXWELL. Well, from looking at them I should judge about 18 inches.

Mr. GRAHAM. Flat-bottom boats?

Mr. MAXWELL. Yes; flat-bottom boats. I think there is nothing more I can state, Mr. Chairman.

Mr. DENISON. I would like to ask you this question, Mr. Maxwell: Is Bubbly Creek, as it is called, between Ashland Avenue and Thirty-ninth Street now, as a matter of fact, navigable?

Mr. MAXWELL. I have never seen anything go up there. I have been in that district now since 1914 and I have never seen anything go beyond where the barges would go there to the reduction works.

Mr. DENISON. I am speaking particularly of the 1,000 feet that they want closed. Do you know how deep the water is there?

Mr. MAXWELL. No; I do not, Mr. Denison.

Mr. GRAHAM. Mr. Denison, we have here old soundings that have been furnished us by those who oppose this project, which show a very considerable depth of water there.

Will you have some one here who can give us definite information about the present depth of water in that channel?

Mr. MAXWELL. I saw those figures here within a very short time. I think this is the blue print showing that.

Mr. GRAHAM. For purposes of identification tell us who made this blue print?

Mr. BLACK. I think his name is shown on there, Mr. Graham. The engineer is here in the court room, and his name is Swenson. He will be here to testify and identify it. Those soundings have been made in the last week in order to show the present condition.

Mr. MAXWELL. May I ask you, just for the record, what your connection is with the Pershing Road Association?

Mr. MAXWELL. President.

Mr. BLACK. And what is your business?

Mr. MAXWELL. I am in the wholesale paper and window-shade business.

Mr. BLACK. You are president of that company?

Mr. MAXWELL. I am not president, because it is a partnership. I am one of the partners.

Mr. BLACK. And your business is located in the central manufacturing district?

Mr. MAXWELL. Yes, sir.

Mr. BLACK. And will be affected directly by this improvement if it is made?

Mr. MAXWELL. Yes; all of our employees who live south have to make a journey north to connect with Thirty-fifth Street, and back again, and the same thing is true of the teaming.

Mr. BLACK. Congressman Graham spoke of the location of the Chicago reduction works. That is north of the proposed part of the river affected by this bill?

Mr. MAXWELL. Yes, sir.

Mr. BLACK. And after this street is closed 75 feet north of the section line, as proposed in the bill, if that is done, that south branch will still open in the same way into the Chicago River and have the same outlet that it now has?

Mr. MAXWELL. Yes, sir; the same outlet.

Mr. BLACK. That is all; thank you.

STATEMENT OF MR. EUGENE S. TAYLOR, OFFICE MANAGER OF THE CHICAGO PLAN COMMISSION, CHICAGO, ILL.

Mr. BLACK. Mr. Taylor, will you please tell the committee what the Chicago plan is and then whatever they want to know about this matter?

Mr. TAYLOR. I would like to say that I am here representing Charles H. Wacker, the chairman of the Chicago plan commission. Mr. Wacker is unable to be here in person, but he requested me to come here and say to you gentlemen that from the standpoint of the Chicago plan commission we see no objection to the legislation pending before the Federal Government declaring

that the west fork of the South Branch of the Chicago River and the part of the south fork known as Bubbly Creek, lying between Ashland Avenue and the north line of Thirty-ninth Street, nonnavigable.

Mr. GRAHAM. Pardon me, I should know, I suppose, but do not. Is the Chicago plan commission an official body?

Mr. TAYLOR. Yes, sir.

Mr. GRAHAM. By whom is it appointed?

Mr. TAYLOR. By the city council.

Mr. GRAHAM. And created by law?

Mr. TAYLOR. Yes, sir; and I might say further, however, that the Chicago

plan commission's power is advisory and not executory. Our power was defined by the city council when we were created as having the right to take the Chicago plan, to recommend back to the city council from time to time what parts of that plan should be carried out, and to make the Chicago plan known to the people of this city. Those two functions comprise our jurisdiction. The Chicago plan commission is composed of 328 individuals, private citizens, and representatives of the city, the State, the county, and other interested governmental agencies. It is a nonpolitical, nonpartisan organization, having at heart simply the best interests of the city of Chicago, not alone for the present but for the future.

Mr. GRAHAM. Serving without salary?

Mr. TAYLOR. Serving without salary, without compensation, without private interests of any sort; nothing but the public good. The Chicago plan that I mentioned is a plan for the physical development of the city of Chicago. It was created about 14 years ago after years of study by the very best technicians in the world, who were gathered together under the leadership of the late Daniel Hudson Burnham and Mr. Edward H. Bennett, who is still our technical consultant, and under the direction of the Commercial Club of Chicago, which is an organization of 100 of the leading business and professional men of this city, this plan was produced and presented as a gift to the city, following which the Chicago plan commission was created, as I have described, I would like to say just one word more about the Chicago plan. It is a plan for all Chicago, for every section of the city and for every element in our civic life. It is intended to facilitate and promote the transaction of business, the movement of people and merchandise to and from about the city, and to provide adequately for the recreation not only for the people who are here but who logically may be expected to come in the future. There are to-day in process of construction, either completed or going forward or well advanced in procedure, 12 of the major features of this Chicago plan, representing an expenditure of upward of \$250,000,000. Those embrace about 75 miles of street widenings, openings, and extensions to facilitate business and commerce and to give our people free access between the various sections of the city.

Another part of the plan is the remodeling of our freight and passenger terminals, notably the West Side Union Station development and the South Side Illinois Central Terminal development. Another portion is the park and the harbor development of the shore of Lake Michigan. Still another covers the creation of 35,000 acres of forest preserves. All of this, as I said once before, is designed to make Chicago a better place in which to live and to conduct our business.

Mr. DENISON. Does the plan include anything in regard to sanitation?

Mr. TAYLOR. No, sir. I might add this one word, that the Chicago plan, of course, is not a plan to make the city over overnight. It is to be carried out step by step, as our financial resources will permit and as necessity demands through a course of years. The Chicago plan covers practically the entire municipality. The Chicago plan commission has taken up portions of that plan one by one, and expects to continue its work on the plan until it shall have been completely carried out.

Mr. GRAHAM. What is your plan as regards the land that is at present occupied by the west branch of the south fork of the river. I have heard something about some proposed extension of Blue Island Avenue. What is there to that?

Mr. TAYLOR. When the city of Chicago passed the ordinance directing the committee on efficiency and economy to take the necessary steps with the Federal and the State Governments we read it in the council proceedings and felt that if the west fork were closed up it would give the city a good opportunity to provide a new street in a district which at present is inadequately served with street facilities. We had our technical staff study that matter, and they submitted a tentative report. At the present moment the plan commission

has not acted upon the matter of that street, which in effect would be an extension of Blue Island Avenue, for the reason that two alternate routes have been suggested. One route would occupy practically the bed of the west fork from about Twenty-sixth Street and Western Avenue to the city limits near Kenton. This route, however, practically cuts in two an industrial district through which the west fork now extends, and objection to that route was voiced and a northern route was suggested which will border this industrial district and lie along its northern edge. The problem is of such importance and there are so many considerations that must be taken cognizance of that our technical staff has not yet had time to give it proper study and submit it to the commission.

Mr. GRAHAM. Is your commission in favor of the plan to extend Thirty-ninth Street across Bubbly Creek?

Mr. TAYLOR. The Chicago Plan Commission has been studying Thirty-ninth Street for quite a number of years. The improvement of Thirty-ninth Street, now called Pershing Road, is a part of the Chicago plan; and at luncheon to-day I believe I expressed our opinion of what Thirty-ninth Street, or Pershing Road, will become from a twofold direction: First, connecting up the lake front, or, rather, giving the people back of the yards access to the lake front, to the parks that are being created, and to the bathing beaches that are being established, and its importance as a major street in the city of Chicago, which is shown by the fact that to-day in a distance of nearly 3 miles there is no through street between Twenty-second and Forty-seventh Streets. There is a street in there—Thirty-fifth Street—that does cross the river, but it is interrupted farther on and is not a through thoroughfare. As has been pointed out, people working in the manufacturing district and in the stockyards district have to go around the three sides of a square because of the fact that there is no through thoroughfare.

On the western end of Pershing Road, Cook County is now cooperating with a zoological organization of citizens that are establishing a zoological garden that people like Hagenbeck, of Germany, Hornaday, of New York, and Muskopf, of St. Louis, declare will be equal to anything of its kind in the entire world. You can appreciate the demands that will be put upon Pershing Road as a through thoroughfare, giving access to that zoological garden, which is in the midst of a large forest-preserve area near Riverside. A little farther west Mr. Joy Morton is developing an arboretum we believe will be unequalled when it is completed. Pershing Road will intersect every north and south street in the city of Chicago. It will give connection with such diagonal streets as Cottage Grove, Archer Avenue, and other thoroughfares of that kind, so that it will be called upon in the future to bear a very heavy burden of traffic for all of the reasons which I have outlined.

Mr. BLACK. I take it, then, Mr. Taylor, there is no doubt that the Chicago plan commission is in favor of this improvement.

Mr. TAYLOR. I thought I started off by stating our position very plainly.

Mr. GRAHAM. You started off by saying that you were instructed to say that your commission had no objection to it, but I have understood that since you have said you were in favor of it.

Mr. TAYLOR. It is a kind of hard proposition to be technically accurate, but I have tried to explain it.

Mr. BLACK. Well, your answer would be yes, would it not?

Mr. TAYLOR. Well, there certainly is no objection to it.

Mr. BLACK. Mr. Taylor, a question was asked Mr. Maxwell, which he was not prepared to answer, as to the means of taking property for the widening of Pershing Road. The Chicago plan, as I understand it, in the widening of all its streets, has found it necessary to condemn property for widening?

Mr. TAYLOR. Yes, sir.

Mr. BLACK. And that is contemplated in connection with this improvement?

Mr. TAYLOR. Unquestionably, property on one side or the other, or on both sides of Pershing Road will have to be acquired by condemnation and the owners of it reimbursed.

Mr. BLACK. The plan is to widen Pershing Road through from Halsted Street to the lake, changing its present width of 66 feet to about 110 feet?

Mr. TAYLOR. One hundred and eight feet all the way through from Lake Michigan on the east to the city limits on the west.

Mr. BLACK. And that will require the taking of property along the sides of the street where it is already opened and paved?

Mr. TAYLOR. Yes, sir.

Mr. BLACK. And what has been the experience in the widening of these arteries and main units of the Chicago plan? I mean as to the value of the property along the improvement—has it increased the values?

Mr. TAYLOR. I could give you a great many figures as to that, but this one instance, I think, will suffice. Michigan Avenue was widened from 66 feet to 130 feet from Randolph Street to the river and to 141 feet from the river north to Chicago Avenue, a distance of a little over a mile. That improvement cost \$16,000,000. Property values in the district known as the zone of assessment, the district that is assessed for benefits, have increased already over \$100,000,000, or more than six times what the improvement cost. No Chicago plan improvement that has ever been made has failed to increase the value not only of abutting property but of surrounding property within a certain distance.

Mr. BLACK. Is there any part of the territory west of this south fork of the south branch that will be opened by this improvement for residence and business purposes?

Mr. TAYLOR. Yes, indeed. All the suburban towns west of Chicago will be opened up to residence by people now in the city, because at the present there is no adequate connection between such places as Downers Grove, Hinsdale, and the like—no direct east and west connection—and naturally, if a street is opened at Thirty-ninth Street, people will be able to live out in that direction and go back and forth on Pershing Road.

Mr. BLACK. There is a great deal of that territory right inside of the present city limits that is not developed at the present time, is there not?

Mr. TAYLOR. The whole southwest side of Chicago is practically in that state, due to the fact that physical conditions have prevented a proper street system from being carried out.

Mr. BLACK. And there is territory in there available for residence purposes that is much closer to the Loop, the center of Chicago, than many of the other residential districts; is not that true?

Mr. TAYLOR. Yes; the district out in that section is located nearer to the heart of the city than other residential sections, both on the North and the South Sides.

Mr. BLACK. Did you explain that there were to be three different roads for traffic on Pershing Road when opened?

Mr. TAYLOR. No; I did not give any of the details about that for the reason that our technicians have not yet definitely decided as to the treatment of Pershing Road. The question compels me to outline how the Chicago Plan Commission acts. Whenever an improvement is suggested, no matter by whom, it is turned over to our technical staff and a very thorough study is made, taking into consideration all the factors that enter into it.

When that study is completed we receive a joint report signed by the technicians of the Chicago Plan Commission and of the city, stating that in their judgment the plan they recommend is the very best plan they know how to work out. That, of course, is predicated upon their approval of the idea that has been submitted. That report is then submitted to the executive committee, composed of 26 members, almost equally divided between members of the city council and the individual members of the plan commission. If the executive committee disapproves the plan, of course that finishes it; but if the executive committee believes the plan is one that is necessary, essential, and beneficial it recommends that the entire Chicago Plan Commission approve it, and the entire commission then passes upon it, gives it very careful consideration, and if, in its turn, it approves it, then the Chicago Plan Commission is first officially on record and it makes its recommendation in accordance with its province to the city of Chicago and the council, and until that is done the commission is not officially on record.

That course of procedure has not been completed in connection with Pershing Road, and we are always very careful, indeed, not to commit the Chicago Plan Commission before it acts, because we have no right or power to do that. However, following out that statement, I wish to say that a street 108 feet wide offers opportunity for a 20-foot space in the center for street-car tracks, two 14-foot sidewalks on each side of the street, and two roadways; those two roadways being 30 feet wide, offering opportunity for three lines of traffic, one standing at the curb—parked vehicles—next to that a line of slow-moving vehicles, and next to that a line of fast-moving traffic. Pershing Road, of course, by reason of its position necessarily would have to provide both for rapid traffic of street cars, for the movement of light vehicles bound either to the forest

preserve and the zoological gardens on the west or the lake-front parks and boulevards on the east, and would also have to provide adequately for commercial traffic, because it is the northern boundary of the stockyards district. It passes through the central manufacturing district, and it has been selected by the United States Government as the district where is Quartermaster Corps has been established.

Mr. GRAHAM. If that completes your statement, Mr. Taylor, we are much obliged to you.

STATEMENT OF MR. EDWIN H. SWENSON, CHICAGO, ILL.

Mr. GRAHAM. Give your official designation or business.

Mr. SWENSON. Civil engineer.

Mr. GRAHAM. Are you in the employ of the city?

Mr. SWENSON. I have done work for the central manufacturing district.

Mr. BLACK. Mr. Swenson, I will show you this blue print and ask you whether that was prepared by you or under your direction.

Mr. SWENSON. This was prepared under my direction.

Mr. BLACK. That indicates in the center of the blue print in the diagonal line between the two lines marked "water's edge" the part of the south branch of the south branch of the Chicago River lying between the east line of Ashland Avenue and the section lying along Thirty-ninth Street.

Mr. SWENSON. Yes, sir.

Mr. BLACK. There are figures in there; do they indicate soundings taken by you?

Mr. SWENSON. They indicate soundings that were taken last Tuesday from the water's surface.

Mr. BLACK. What was the condition of the water itself at that time?

Mr. SWENSON. There was some scum on top of the water last Tuesday when the soundings were made.

Mr. BLACK. Was it clear or black?

Mr. SWENSON. The water is black.

Mr. BLACK. Does it smell, or is it sweet?

Mr. SWENSON. There was a decided odor to the water on that day.

Mr. BLACK. What was the nature of the bottom, as you determined it from your soundings?

Mr. SWENSON. In making the soundings a pole was used and, of course, the bottom could not be seen from the scow in which we were riding, but we could feel at the end of the pole that there was some sludge or muck or whatever it might be called, on the bottom.

Mr. BLACK. And the figures shown on there were taken at what intervals?

Mr. SWENSON. They were taken at 100-foot distances along the longitudinal center of the stream and 15 or 20 feet transverse across the stream.

Mr. BLACK. They indicate feet and tenths of feet, do they not?

Mr. SWENSON. They indicate feet and tenths of feet from the water's surface.

Mr. BLACK. I will ask that that blue print be marked "Exhibit A" of this date.

Mr. GRAHAM. The blue print will be inserted in the record and marked "Exhibit A."

Mr. BLACK. Did you find along the east line of this stream at that point any dock in a usable condition?

Mr. SWENSON. There is a bulkhead approximately along the east line of Ashland Avenue.

Mr. BLACK. I am talking about the east line of the stream from Ashland Avenue up to Thirty-ninth Street.

Mr. SWENSON. Yes; there is a piece on the south side of the stream running about 450 feet from the east line of Ashland Avenue in a northeasterly direction.

Mr. BLACK. Is that a completed dock?

Mr. SWENSON. It was, at one time.

Mr. SWENSON. Well, is it now?

Mr. SWENSON. It is in a very dilapidated condition.

Mr. BLACK. At the time you were there were there any boats on that stream floating?

Mr. SWENSON. There were no boats on the water's surface. There were one or two sunken scows.

Mr. BLACK. How long have they been there to your knowledge?

Mr. SWENSON. To my knowledge they have been there over three years. They were probably there much longer than that.

Mr. BLACK. That is as long as you have known that territory?

Mr. SWENSON. Yes, sir.

Mr. BLACK. How frequently have you seen it in those three years?

Mr. SWENSON. On an average of 12 times a year.

Mr. BLACK. And have you seen it at any time when any boats were tied up at that point, which you have designated as a dock, on the south side?

Mr. SWENSON. No.

Mr. BLACK. Have you ever seen any boat navigating in there during that period?

Mr. SWENSON. No.

Mr. GRAHAM. Do you know the Lettch property?

Mr. SWENSON. I have an idea where it is.

Mr. GRAHAM. Show me on this map where it is located.

Mr. SWENSON. I think it is this lot, No. 5; I am not sure.

Mr. BLACK. What is the scale of that map, Mr. Swenson?

Mr. SWENSON. One hundred feet to the inch.

Mr. GRAHAM. Is there any dock on lot 5?

Mr. SWENSON. About 40 feet of docking, perhaps.

Mr. GRAHAM. What condition is that in?

Mr. SWENSON. That piece of docking right in there is in a very dilapidated condition.

Mr. DENISON. For the purposes of the record, state how wide this stub end of the fork is between Ashland Avenue and Thirty-ninth Street, on an average?

Mr. SWENSON. I have never made any direct measurements; but I would say about 150 feet on an average. I would have to scale it off of those blue prints to make sure of that.

Mr. DENISON. And the part that is involved in this legislation is about 1,000 feet in length?

Mr. SWENSON. Approximately.

Mr. DENISON. Does any water go into the Chicago River from this part of it that adds to the supply of water?

Mr. SWENSON. I do not believe that there is. I think the only water that gets into that portion of the slip is what comes from an outfall sewer on Ashland Avenue.

Mr. DENISON. What do you mean by an outfall sewer?

Mr. SWENSON. There is a sewer that runs on Ashland Avenue coming up from the south to a point opposite to the stub end of this slip and then turns and runs west. That was built by the sanitary district, and that sewer is provided with an overflow chamber, so that at times of heavy storms, when the sewer is fully charged with water, the surface water runs over this weir into this stub end of the slip, but that does not take care of the sanitary flow in those sewers.

Mr. DENISON. The depth of this water is shown on this map?

Mr. SWENSON. Yes; in feet and tenths, from the water's surface.

Mr. DENISON. That is all; thank you.

STATEMENT OF MR. E. L. WARD, OF CHICAGO, ILL.

Mr. BLACK. Mr. Ward, you are connected with Swift & Co.?

Mr. WARD. Yes, sir.

Mr. BLACK. You are familiar with this territory involved, lying alongside of this south branch of the south branch of the Chicago River?

Mr. WARD. Yes, sir.

Mr. BLACK. On this blue print, which has been marked "Exhibit A," there are three lots, Nos. 6, 7, and 8, each of a water's-edge line, marked "Mechanical Manufacturing Co." Is that the property of Swift & Co.?

Mr. WARD. It belongs to the Mechanical Manufacturing Co.

Mr. BLACK. And are they affiliated in any way with Swift & Co.?

Mr. WARD. Yes, sir.

Mr. BLACK. Please state whether or not you are familiar with that property along in there.

Mr. WARD. I am; yes, sir.

Mr. BLACK. Have you charge of that Mechanical Manufacturing Co. property?

Mr. WARD. Partially, yes.

Mr. BLACK. And how long have you been familiar with it?

Mr. WARD. I have been in the stockyards about 30 years and have had more or less to do with that property for the last 10 years.

Mr. BLACK. During the time you have known that property, has there been any current in that river opposite your property?

Mr. WARD. No, sir.

Mr. BLACK. Have the owners of that property during the time you have known it used it for any navigation purposes?

Mr. WARD. No; they have not.

Mr. BLACK. Have you seen any boats in there during that time?

Mr. WARD. No.

Mr. BLACK. Please state whether or not the owners of that property, lots 6, 7, and 8, are in favor of this improvement—Pershing Road—and the passage of this bill.

Mr. WARD. Quite decidedly so; yes, sir.

Mr. BLACK. Do you know who owns the triangular piece of property over there bounded by Ashland Avenue, Thirty-ninth Street and the river, just opposite your property?

Mr. WARD. That belongs to the central manufacturing district.

Mr. BLACK. And are they in favor of this improvement?

Mr. WARD. Yes, sir.

Mr. BLACK. What has been the condition of the water in that river during the time you have known it?

Mr. WARD. It has been the stagnant butt end of the river.

Mr. BLACK. How recently have you seen it?

Mr. WARD. Two hours ago.

Mr. BLACK. And with respect to its condition to-day, how long has it been in substantially the same condition?

Mr. WARD. As far as I know, 10 or 15 years, that I remember, and even longer than that.

Mr. BLACK. The property that Swift & Co. own there, or rather, the Mechanical Manufacturing Co. owns, lot No. 8, the north line of that property is directly on this proposed Pershing Road, is it not?

Mr. WARD. Yes, sir.

Mr. GRAHAM. It is a matter of some curiosity to me to know why that stream does not fill up more than it does. There is a large amount of sludge and sediment being deposited there and yet I have here a report of an examination made by Colonel Riché in June, 1913, showing soundings in that river, which seem to be about the same as are given in this blue print just submitted.

Mr. WARD. There has been dredging done in there within the last two or three years.

Mr. GRAHAM. By whom?

Mr. WARD. By the stockyards interests, who were dumping some of their stuff in there through an arrangement with the drainage trustees.

Mr. GRAHAM. They have been taking it out of there, then?

Mr. WARD. Yes, sir; it would have been filled up entirely if it had not been for that.

Mr. GRAHAM. You think it would fill up pretty rapidly?

Mr. WARD. Undoubtedly. Of course, it is a little different now since they have closed to Ashland Avenue.

Mr. GRAHAM. Of course, this committee is not particularly interested in this, but I would like your judgment about it: Suppose you built a bulkhead across there at Thirty-ninth Street, will you not have another dead end and the same thing over again? What is ultimately going to happen to that end of the Chicago River?

Mr. WARD. Ultimately it will be filled up. There is no water coming in there. There is no flow whatever, and has not been for years.

Mr. GRAHAM. Is it not the lack of flow and the dead end there that makes Bubbly Creek what it is, largely?

Mr. WARD. Yes; due to the sewage that has been dumped in there in years past or the packing houses that drained into Bubbly Creek, including the east end of it.

Mr. GRAHAM. Where will they drain if this is shut off?

Mr. WARD. There has been an enlarged sewer put in on Ashland Avenue and a cross sewer on Thirty-ninth Street that will take care of it.

Mr. GRAHAM. And that would discharge where?

Mr. WARD. Into the main channel.

Mr. GRAHAM. The sanitary district channel?

Mr. WARD. Yes, sir.

Mr. GRAHAM. I think that is all, Mr. Ward; thank you.

STATEMENT OF MR. HARVEY B. FLEMING, OF THE CHICAGO SURFACE LINES.

Mr. BLACK. Mr. Fleming, you are connected with the Chicago Surface Lines?

Mr. FLEMING. I am.

Mr. BLACK. You have made some study for the Chicago Surface Lines of this Pershing Road improvement?

Mr. FLEMING. I am familiar with the conditions out there.

Mr. BLACK. Will you please be good enough to tell the committee what your opinion of that is, what facts you have discovered, how it will affect the territory to the west as well to the east if this improvement is put in, and whether it will be an advantage or disadvantage, etc.

Mr. FLEMING. The Chicago Surface Lines operates in the city of Chicago approximately 1,000 miles of track on the surface of the streets. We have at the present time a street car line on Thirty-ninth Street that has been there for many years—I have been acquainted with it for 22 years—extending from Cottage Grove to Halsted Street. We also have on Thirty-ninth Street a street car line extending from Ashland Avenue to Western Avenue. That was built during the war in order to provide transportation for Government employees in the Government buildings in that district.

Then west of Western Avenue we have existing transportation lines which could be connected up with the other lines I have mentioned so as to provide through service for that district from the drainage canal to Lake Michigan, provided Thirty-ninth Street, or as now called, Pershing Road, was opened up between Halsted and Ashland Avenue, a distance of approximately one mile. As I stated before, I have been acquainted with that district for over 22 years, and I think the first year I was in Chicago I recommended the opening of that road or street through there. It may not have been along the exact lines proposed to-day, but it was very evident to me that it was necessary to provide transportation for that district. The property owners at that time did not favor it. At the present time, I understand, they do favor the opening of that street. The Chicago Surface Lines is in favor of the opening of the street and is in favor of extending the street car service to that district and connecting up Thirty-ninth Street on the east with Thirty-ninth Street on the west so as to provide through local transportation service.

Mr. GRAHAM. Does your franchise cover that street?

Mr. FLEMING. No, sir; we have no franchise at the present time. It would be necessary for the city council to pass an ordinance granting permission to lay tracks there.

Mr. GRAHAM. You think that would be done?

Mr. FLEMING. Under the Illinois State laws, it requires the consent of abutting property holders and I do not think there would be any trouble about getting the consent of the abutting property owners. At the present time, as some of the other witnesses have stated, the transportation in that district is very poor. I want to affirm that. We have not proper transportation in the district. The reason is that we have no through street between Thirty-fifth and Forty-seventh Streets. That is a distance of a mile and a half. The result is that if you live east of Halsted Street, between Thirty-fifth and Forty-seventh, and you want to go into any part of the territory west of Ashland Avenue, between Thirty-fifth and Forty-seventh Streets, you must jog there north to Thirty-fifth or south to Forty-seventh. In order to build this extension and open up this new thoroughfare, it was necessary to secure the consent of the abutting property owners to close the old so-called stockyards slip, between Halsted and Racine. The Chicago City Railway Co., which is one of the companies constituting the Chicago Surface Lines, owns or controls the property abutting that street on the north side from Halsted to Morgan Street.

The Chicago City Railway Co. and the owner of the property which we lease between those points consented to the closing of that slip and dedicated land for street purposes in front of and adjacent to the property which is owned by the Chicago City Railway Co., which is approximately one-fourth of the distance between Halsted and Racine. That work is in progress at the present time; that is, the sanitary trustees are constructing the necessary sewer which will permit the filling in of that old slip and thus we will have a street extending from Halsted Street to Racine when that work is completed. It is very necessary, in my judgment, now to continue and open

up that street between Racine and Ashland Avenue. Mr. Taylor has already explained that that plan has met with the approval of the plan commission. The Thirty-ninth Street Improvement Association, as I understand it, also approves of it. In order to make the extension west of Racine, it will be necessary to cross this so-called Bubbly Creek. That could be crossed on a bridge, but I do not think we are warranted in spending the money that would be required for a bridge at that location. When I say "we" I mean the citizens of Chicago. The property holders would have to pay for that bridge and maintain it. We formerly had a bridge at Ashland Avenue across that slip. I was acquainted with it. It seems to me I remember when they installed it and I remember when they took it away. I do not remember the exact dates, but it was a swing bridge and in all my acquaintance with it I never knew them to open it up for the passage of a vessel, although they had spent the money and installed the bridge for that purpose, with one exception, and that was a pile driver used about the work of maintaining the bridge.

Mr. GRAHAM. Did they keep a bridge tender there?

Mr. BLACK. They kept two shifts of bridge tenders there.

Mr. FLEMING. Yes; they had the additional expense of maintaining it. I never knew them to open it for the passage of a vessel, as I say, except a pile driver which was used in the work of maintaining and repairing and, finally, in tearing down the bridge.

Mr. GRAHAM. How much navigation did you ever know of in this end of the river which is proposed to be shut off?

Mr. FLEMING. I never have seen a boat in that section except a dilapidated scow sunk along the bank there, aside from this pile driver I spoke of. I do not think we would be warranted in spending the money for a bridge there or for maintaining a bridge there, and I want to repeat that the Chicago Surface Lines is in favor of opening the street and extending service to that district.

Mr. DENISON. If this improvement is carried out, Mr. Fleming, what will they do—fill in and build a street right across this creek?

Mr. FLEMING. If I had charge of it I would put a bulkhead in just north of the north line of the proposed Pershing Road extension, and then fill in south of that point.

Mr. DENISON. I was just going to say that that strip of 1,000 feet can not be left as a pond there, and it will have to be filled in eventually.

Mr. FLEMING. I would fill it in if I had anything to do with it.

Mr. BLACK. The bill gives permission to the local authorities to fill that in in case the legislation is passed.

Mr. DENISON. I do not think we have any authority in that respect. All we can do is to declare it nonnavigable, and the other is a matter to be determined by your local municipal authorities.

Mr. BLACK. May I explain that the original platting of that subdivision shows the lot lines running out to what is now approximately the center of this stream as they appear in the dotted line on that blue print, and the property along that river belongs to the adjoining owners, so that it would be to their interest to fill it in and get that added footage.

Mr. DENISON. That suggests a matter that I want to have appear in the record before we get through. I want some lawyer, either yourself or some one else, to testify in the case, because I want to interrogate him on some legal questions involved in this matter.

Mr. Fleming, do you think that this stub end of the creek that is now in contemplation has any commercial value whatever for navigation between Thirty-ninth Street and Ashland Avenue?

Mr. FLEMING. I have never known it to be used commercially. I might say that some 10 years ago we had occasion to purchase granite in the Thousand Islands district of the St. Lawrence, shipped to Chicago by boat, and we investigated the question at that time of unloading at our yard, which was located east of Racine—the part they are now closing—and we found we had not depth of water sufficient to accommodate the boats in question, and so we rented property up on the main branch where the water was of sufficient depth to take care of our shipments at that time. That was the only time we have ever had occasion to use the river or use the slip that was adjacent to our property, and we found it was not available for our purposes.

Mr. DENISON. If that part is closed, as is now contemplated by this improvement, will it affect in any way the navigability of the part of the river that is not closed?

Mr. FLEMING. No, sir; I should not think so.

Mr. BLACK. Mr. Fleming, have you any idea as to what the cost of a bridge would be across that 108-foot street, if one should be necessary to be constructed there? Mr. Shanahan stated it would be somewhere between two and three million dollars. Are you in position to say whether he is correct about that?

Mr. FLEMING. It would depend largely on the type of bridge that you would build. We used to be able to build a bridge of the type that you now see being constructed across the main river here in the neighborhood of \$500,000 to \$1,000,000, but now they are costing over \$2,000,000.

Mr. BLACK. And if this should be a 108-foot wide lift bridge, such as is being put in generally now in bridge improvements in Chicago, the cost at present prices would be somewhere in the neighborhood of \$2,000,000?

Mr. FLEMING. I should think if you were going to make it 72 feet wide it would cost more than that. That is a very wide bridge.

Mr. BLACK. It would not be feasible, if you had a roadway such as Mr. Taylor described, for street cars in the middle and a roadway for three types of vehicles on each side of that, and a footway beyond that, to choke down the width of your bridge below the width of your street.

Mr. FLEMING. That would just make the bridge the neck of a bottle and congest traffic.

Mr. BLACK. And defeat the very purpose of the improvement there.

Mr. FLEMING. Yes; it would.

Mr. BLACK. What has been your experience, Mr. Fleming, with respect to the extension of through street-car service in the development of property along the line of the new through service—has it improved it or depreciated it?

Mr. FLEMING. The property has always been benefited by it.

Mr. BLACK. Are you familiar, in a general way, with the territory which lies west of Ashland Avenue and along the line of the proposed Pershing Road, now Thirty-ninth Street?

Mr. FLEMING. I am, generally; yes.

Mr. BLACK. There is much of that territory that is not built up at all, is there not?

Mr. FLEMING. Yes; there is room for great improvement out there.

Mr. BLACK. And has it been your experience in the street-car business that the development of a through line would cause building of both residences and business places along such an opened line?

Mr. FLEMING. That is the result.

Mr. BLACK. If this Pershing Road improvement goes through from Ashland Avenue to Riverside, is it the plan of the Chicago Surface Lines to extend the street car line from the lake to the end of the Pershing Road improvement?

Mr. FLEMING. Our charter only permits us to operate to the city limits.

Mr. BLACK. How far is that from Riverside?

Mr. FLEMING. It is at Kenton Avenue.

Mr. BLACK. That would be more than half way.

Mr. FLEMING. We do not operate outside of the city.

Mr. BLACK. I mean that would be more than half of the total distance from the Lake to Riverside. It is about 11 or 12 miles.

Mr. FLEMING. I should say it would be approximately half way.

Mr. BLACK. That is all, Mr. Fleming.

STATEMENT OF BLAINE S. SMITH, VICE PRESIDENT IN CHARGE OF CIVIC INDUSTRIAL DEPARTMENT, CHICAGO ASSOCIATION OF COMMERCE, CHICAGO, ILL.

Mr. GRAHAM. Mr. Smith, you have a prepared statement, and unless there is something you want to add to it you may hand it to the clerk, and we will put it in the record. Of course, the committee will read it very carefully and will get the full benefit of your statement.

Mr. SMITH. All right, sir. The position of the Chicago Association of Commerce is favorable to the filling in of this channel.

Mr. BLACK. Does that statement speak of the manner in which the Chicago Association of Commerce is composed?

Mr. SMITH. It describes its composition and its representation and the study we have made of the question and our conclusion and reasons.

Mr. DENISON. You represent the Association of Commerce, you say?

Mr. SMITH. Yes, sir.

Mr. DENISON. What is that organization?

Mr. SMITH. It is an organization of business men, professional men, representing the business interests of Chicago, with about 6,500 members, most of them being firms or corporations rather than individuals, although individuals are included.

Mr. DENISON. What is the purpose of the association?

Mr. SMITH. The purpose is to represent the business interests and the civic interests of Chicago in matters of business and in matters of civic development in which Chicago is interested.

Mr. DENISON. Do you have anything whatever to do with questions of transportation?

Mr. SMITH. Yes; we have committees studying practically every phase of transportation.

Mr. DENISON. Is it your judgment and the judgment of your organization that this stub end of what is called Bubbly Creek, between Thirty-ninth Street and Ashland Avenue, is of no value from the standpoint of transportation of commerce in the future?

Mr. SMITH. We think it is of exceedingly doubtful value, but whatever value it may have we believe is more than outweighed by the value of the Thirty-ninth Street improvement as a means of developing the city and providing additional methods of transportation.

Mr. DENISON. How long have you been acquainted with it, closely?

Mr. SMITH. We studied it commencing last June, officially, as a committee.

Mr. DENISON. How long have you known it otherwise, personally?

Mr. SMITH. Oh, more or less, for many years, but not intimately.

Mr. DENISON. Did you ever know of any commerce on it?

Mr. SMITH. Not from personal observation or personal knowledge. I understand it is said that boats did use this river up to around 1900 or 1901. I know of nothing later than that and I know of no statement that it has been used since then. However, I do not pretend to be informed on that point.

(The statement above referred to follows.)

OCTOBER 6, 1922.

INTERSTATE AND FOREIGN COMMERCE COMMITTEE,
SUBCOMMITTEE ON H. R. 9049.

GENTLEMEN: The Chicago Association of Commerce appreciates the opportunity your committee has extended the public and interested individuals and organizations to make known their views with reference to H. R. 9049.

For the information of your committee it may be said that the Chicago Association of Commerce is an organization of some 6,500 members representing all lines of business and industry banded together for the purpose of advancing the business interests of its members and the civic welfare of Chicago.

Through its civic industrial committee our organization has been interested in the movement which has for its object the closing of about 1,000 feet of the west arm of the South Fork of the South Branch of the Chicago River.

Early in June of this year the civic industrial committee made an investigation of the condition of this particular portion of the Chicago River, and came to the conclusion that H. R. 9049, then in Congress, was worthy of the support of our organization.

The executive committee of the Chicago Association of Commerce, acting upon the recommendation of the civic industrial committee, adopted the following resolution on June 16, 1922:

"Resolved, That the Chicago Association of Commerce approve H. R. 9049 which is a measure giving approval by Congress to the filling of about 1,000 feet of the west arm of the South Fork of the South Branch of the Chicago River, and that the president of the Chicago Association of Commerce be authorized to address a communication to Col. C. R. Miller, director of public works of the State of Illinois, requesting him to indorse the improvement; and further that the president be authorized to address communications to the Chicago delegation in Congress urging their active support of the measure."

The action called for by the above resolution was carried out by the Chicago Association of Commerce.

As supplementing this resolution we desire to state that our position on this matter is largely influenced by the belief that the closing of this portion of the stream will directly and indirectly prove of great benefit to a large body of the citizens of Chicago, and in particular those residing or working on the south and west sides of the city, and that the benefits to be enjoyed if this portion of the stream is closed outweigh any disadvantages which may be alleged by reason of its being closed.

The widening and extension of Pershing Road (Thirty-ninth Street) to form a continuous traffic artery running from the lake front west to the forest preserve is one of the great improvements fathomed by the Chicago plan commission and vitally needed by Chicago. The Pershing Road project will receive great impetus if this particular portion of the stream is permitted to be filled.

Large bodies of Chicago's citizens living west of the Union Stockyards and central manufacturing district now have but imperfect access to the lake front or to places of employment in this district, and likewise people living east of the Union Stockyards and central manufacturing district experience similar difficulties in reaching the forest preserves west of the city or places of employment in the district and west of the district by reason of the present inadequacy of direct east and west through streets.

Added to the inconvenience suffered by the traveling public, whether travel is by street car or automobile there is the need of extending Pershing Road (Thirty-ninth Street) across the city to give an added thoroughfare for cross-town business traffic.

The extension of Pershing Road (Thirty-ninth Street) under present conditions would involve the construction of a movable bridge across the west arm of the South Fork of the South Branch of the Chicago River, because this portion of the stream is now technically a navigable waterway. A movable bridge at this location would constitute an unnecessary expense which might endanger and would surely delay the prosecution of this greatly needed improvement. It should be explained that all bond issues for street improvements of this character are submitted to a referendum vote of the people, and the proposition must be sold to the public on the basis of economy as well as necessity before a favorable vote may be expected.

The Chicago Association of Commerce has adopted a favorable attitude on the question of waterway development, with respect both to the Great Lakes, St. Lawrence, and Illinois waterway projects. We believe it not inconsistent with this attitude to favor closing this small portion of the west arm of the South Fork of the South Branch of the Chicago River. Considering the present character of development of the district, we believe the most probable future of the undeveloped property lying along this portion of the stream is as sites for the same character of business and industry which now predominates in the district and which depends upon rail transportation, and largely measures its services by the hours taken in delivering goods to out-of-town customers.

Assuming, however, that some industry might locate along this portion of the stream and desire to use water transportation, there still remains a doubt whether the Government, the sanitary district of Chicago, or any other public agency would be justified in conducting at the public expense the necessary dredging operations to maintain the navigability of this small stub end of waterway.

It is not believed that any one would seriously contend that the ultimate success of the Great Lakes, St. Lawrence, or Illinois waterway projects, so far as Chicago is concerned, depends upon the keeping open of 1,000 feet of the west arm of the south fork of the south branch of the Chicago River. It is urged for the serious consideration of your honorable body that a great public improvement, about the benefits of which to a large body of people there is no doubt, will be impeded and made unnecessarily expensive to the public if this small section of waterway is still to be regarded by the Government as navigable.

Regardless of the movement to widen Pershing Road (Thirty-ninth Street) and the considerations advanced in its behalf, we believe the present an opportune time for the Government to determine as a matter of public policy whether it is justified in longer accepting the responsibilities and expenses incident to the supervision and maintenance of waterways navigable as a matter of law, but of doubtful navigability as a matter of fact, and for which no public demand exists for their improvement.

Summarizing, the Chicago Association of Commerce bases its position on this matter on the broad ground of the greatest good to the greatest number. We believe the facilitating of the Pershing Road (Thirty-ninth Street) improvement of greater import to Chicago than the maintaining of the legal navigability of this small portion of the Chicago River, and we doubt that future development of the property fronting this branch of waterway will ever justify the expenditures which will be necessary to make the waterway navigable as a matter of fact.

Respectfully submitted.

BLAINE S. SMITH.

Vice President, the Chicago Association of Commerce.

STATEMENT OF LANGDON PEARSE, OF THE SANITARY DISTRICT, CHICAGO, ILL.

Mr. BLACK. Mr. Pearse, you are familiar with this proposed bill, proposing the closing of Bubbly Creek?

Mr. PEARSE. I know there is such a bill; I have not seen it.

Mr. BLACK. And you are familiar with the territory mentioned in the bill?

Mr. PEARSE. I am familiar with the general territory; yes, sir.

Mr. BLACK. Will you please tell the committee what you know about that situation and whether, in your opinion, it would be desirable to close that river or otherwise?

Mr. PEARSE. I will say to the committee that I am not authorized to speak in behalf of the sanitary district. Our chief engineer is here for that purpose, and if there are any questions that the counsel would like to ask me as an individual I will try to answer them.

Mr. DENISON. What position do you hold?

Mr. PEARSE. I am the sanitary engineer with the sanitary district.

Mr. DENISON. And you say the chief engineer is here?

Mr. PEARSE. Yes; Mr. Ramey, and he is the man who should properly answer that question, if you are asking it on behalf of the sanitary district.

Mr. BLACK. I had understood that Mr. Ramey was not able to be here and that Mr. Pearse had come in his place.

Mr. PEARSE. That information was given as of yesterday. Mr. Ramey is now here.

STATEMENT OF MR. H. P. RAMEY, CHIEF ENGINEER OF THE SANITARY DISTRICT OF CHICAGO.

Mr. BLACK. Mr. Ramey, what is the sanitary district?

Mr. RAMEY. The sanitary district is a municipal corporation created by the State legislature to take care of the drainage situation of Chicago—to take care of the sewage after it has been collected by the city.

Mr. BLACK. Are you familiar with this territory between Ashland Avenue and Thirty-ninth Street, covered by this proposed closing of the river?

Mr. RAMEY. Yes; I am, more or less.

Mr. BLACK. Is that a part of the system of the sanitary district?

Mr. RAMEY. That is a part of the Chicago River.

Mr. BLACK. Is it used by the sanitary district for the disposal of sewage or for drainage?

Mr. RAMEY. No.

Mr. BLACK. Have you given any thought to the subject of this bill, as to whether it is desirable or otherwise that the river be closed at that point?

Mr. RAMEY. I had this matter up with the trustees yesterday, and they authorized me to state to this committee that they would offer no objection.

Mr. GRAHAM. That is not the question. The fact that a person does not object does not get us anywhere. We want to know your judgment about it. What does the sanitary district think about this?

Mr. RAMEY. That was the only answer they would give me.

Mr. GRAHAM. Well, that does not help the committee a bit, to say you have no objection. What is your judgment about it? Do you have any individual judgment?

Mr. RAMEY. Well, my individual judgment would not be the judgment of our trustees.

Mr. GRAHAM. Well, I presume that is true; but what is your judgment?

Mr. RAMEY. I know that that river serves only to carry the storm-water overflow from the Ashland Avenue sewer. That is the only benefit it is to the sanitary district.

Mr. BLACK. Is it at present a healthful, cleanly stream?

Mr. RAMEY. It is not a clean stream at present.

Mr. BLACK. And is it at present a detriment or an improvement to the property in that neighborhood, or the development of the property?

Mr. RAMEY. Well, from a sanitary standpoint, in its present condition, it is a detriment.

Mr. BLACK. How long has it been in its present condition, to your knowledge?

Mr. RAMEY. Fifteen years.

Mr. BLACK. Has the sanitary district at any time during the period you have been familiar with it, done anything toward dredging or cleansing the bed of the stream.

Mr. RAMEY. Yes, sir.

Mr. BLACK. How long ago?

Mr. RAMEY. About 12 years ago.

Mr. BLACK. And in a general way, what did that consist of?

Mr. RAMEY. That consisted in dredging the west fork and, as I remember it, we dredged the east fork, too, at that same time.

Mr. BLACK. I take it that that part that you speak of as the west fork is described as the south branch of the south branch. It is the part that runs to the southwest from the main channel.

Mr. RAMEY. Yes; we call that the west fork.

Mr. BLACK. How far in did you go with your dredges?

Mr. RAMEY. At one time we went clear to the bulkhead west of Ashland Avenue.

Mr. BLACK. Before it was filled up?

Mr. RAMEY. Before it was filled up.

Mr. BLACK. And that was 12 years ago?

Mr. RAMEY. About 12 years ago.

Mr. BLACK. And did you dredge in that territory between Ashland Avenue and the proposed Thirty-ninth Street?

Mr. RAMEY. I am not sure just what the limits of the dredging were at that time.

Mr. BLACK. Were you personally there?

Mr. RAMEY. I was not personally in charge of that job.

Mr. BLACK. Have you known of it at any time in the last 15 years to be used for the floating of any boat or to be used for navigation in any way?

Mr. RAMEY. Only for the equipment that was taken up into the west arm.

Mr. BLACK. For the dredging?

Mr. RAMEY. For the dredging.

Mr. BLACK. Would the filling up of that section along in there and the removal of that body of smelling water purify the air in that neighborhood and make it a more livable place, in your judgment?

Mr. RAMEY. It would.

Mr. DENISON. Mr. Ramey, does the water that flows out of that sewer or overflows from the sewer into this water contribute materially to the navigability of the rest of the river, in your judgment.

Mr. RAMEY. No.

Mr. DENISON. Is there any water that flows now from this stub end of the river into the river beyond Thirty-ninth Street that contributes to the navigability of the river beyond that point.

Mr. RAMEY. No.

Mr. DENISON. That is all, Mr. Ramey.

STATEMENT OF MR. E. A. MUNGER, PRESIDENT OF THE GREATER THIRTY-NINTH STREET ASSOCIATION, CHICAGO, ILL.

Mr. BLACK. Mr. Munger, what is the constitution and purpose of your association?

Mr. MUNGER. This association was formed about 15 or 18 years ago and is the parent organization of the various activities that have since directed themselves to Thirty-ninth Street and have eventuated into Pershing Road and the Pershing Road Association. It was composed originally of the citizens of the east end of Thirty-ninth Street or Pershing Road. They are in the district known as Oakland. The Oakland district was pocketed, and some years ago I, as trustee of a large estate there and a number of other persons interested in development, started the Thirty-ninth Street association and have been praying ever since for an opportunity to pay special assessments, but we can not get to it. We have been trying to spend our money to get this street opened and have met with every imaginable difficulty that could be devised. One by one the persons who objected have been won over to the side of the proponents, beginning with the stockyards and the owners of the property along Bubbly Creek. Even the property owners who formerly were afraid of the special assessment now want it. We were the original Greater Thirty-ninth Street boosters in an attempt to get out of that pocket.

Mr. BLACK. Is there any connection of the Greater Thirty-ninth Street Association with any other organization of clubs or associations?

Mr. MUNGER. It is associated with the Affiliated Clubs of Chicago. I am one of the members of that committee, which is here to-day. It represents 61 affiliated down-town and south-side clubs, with a membership of about 225,000, and they have unanimously indorsed this proposition and have asked for it.

I want to say, further, Mr. Chairman, that there is not now any man in office on the south side of Chicago who was not elected on a platform resolving to close Bubbly Creek and open Thirty-ninth Street. I do not know what the official sanitary board say through their engineers here, but I know when we go down there they all stand up on their hind legs and say that they are for it and for it hard.

Mr. GRAHAM. What will they do if Congress deprives them of this campaign issue?

Mr. MUNGER. I do not know what they will do about that, I am sure. That is their problem; but we have had that clear through, and our most ardent helper has been Congressman Madden. I want to say that frankly. We selected him as the first president of the association, and he has stood flatfootedly on the platform that Thirty-ninth Street should be opened through to the Pacific coast, and we are still with him on that.

Mr. BLACK. What will be the advantages of opening Thirty-ninth Street to that section across there?

Mr. MUNGER. The advantage of having a great thoroughfare where we now have none. We are bounded on the one side by the lake and on the other side by Bubbly Creek and the yards. The people who live in the yards are necessarily congested because they must follow transportation lines. They can not live west of the yards and get into the yards because of the transportation situation. It is much worse than has been described here, because, as a matter of fact, to-day, if you are going in any light vehicle and going, as I did yesterday, out to Archer Road, it is necessary either to go down to Twelfth Street and out Ogden Avenue and across Twenty-second or else go south to Ninety-fifth Street, that being the only practical route. There are roads that can be used for trucks, but for light vehicles it is practically easier and quicker to go by way of Ninety-fifth Street than any other way.

Mr. DENISON. Mr. Munger, I do not see how anyone could dispute the proposition that it would be a valuable improvement to the city and to the people in that part of the city to open up Thirty-ninth Street, but the more particular question involved is as to what ought to be done with this Bubbly Creek. Of course, Thirty-ninth Street could be opened up by putting in a bridge there.

Mr. MUNGER. In four or five years.

Mr. DENISON. And what I would like to get your judgment on is whether, in order to do that and get Thirty-ninth Street opened up on account of the benefits that you have described, you think this stream ought to be closed and filled up?

Mr. MUNGER. Unquestionably.

Mr. DENISON. Have you made a study of the subject with a view to the future commerce of the city and the future methods of transportation?

Mr. MUNGER. Well, it has not been exhaustive and particularized; but, of course, I have given a great deal of thought to that particular result.

Mr. DENISON. Have you been able to see, or do you see at this time, any future benefit that might accrue to the city, as a means of transportation, to have this creek open on up to Ashland Avenue?

Mr. MUNGER. I can not imagine it can ever be of any service to the city. Frankly, it is not conceivable that there ever could be enough traffic on that stream to justify payment of profits to the city or the people of 1 per cent on the cost of a bridge. Assuming that traffic might, conceivably, some time, under some circumstances, go up that branch, it could not get anywhere else, and the result would be such that we could better afford to condemn a railway and haul in there rather than do it by this means. It is an utterly impracticable method of using what they now have. It is not impossible that it could be so used, but the development of the city and the country would not indicate that that would be the natural result.

Mr. DENISON. Of course, if it should ever be used as a means of water transportation or for terminals, it would have to be dredged and deepened and straightened by Congress or someone else, would it not?

Mr. MUNGER. Yes; Congress would have to spend a lot of money and we would have to spend a couple million dollars for a bridge and another million

for it to be endowed. It would have to be endowed for three shifts of men working eight hours a day each, who would swing the bridge once or twice a year to oil it perhaps.

Mr. DENISON. Your association, I take it, is interested in the future transportation problems of the city.

Mr. MUNGER. Yes; we regard this as a transportation problem purely.

Mr. DENISON. You think, then, that there are no transportation possibilities in that stub end of the creek that are of sufficient importance so that this ought to be kept open.

Mr. MUNGER. I should say that if you put it in the most favorable light it would be the transportation of 10 men or 10 tons of merchandise as against 10,000,000 tons or 10,000,000 men.

Mr. BLACK. What do you think about its present condition as affecting the health of the people in the immediate vicinity?

Mr. MUNGER. Except for giving people nausea, I think it does not do anything worse than that.

Mr. DENISON. Right on that point, I think that is true, but I do not see any hope of relief for those people, because when you close it up you will have the same condition beyond Thirty-ninth Street, and you are going to have your smells and your mosquitoes just the same.

Mr. MUNGER. Of course, this bill only takes care of one place, and I want to say that no mosquito could breed in that water.

Mr. DENISON. Yes; I may be wrong about that.

Mr. MUNGER. It would certainly kill them. As a practical problem, the land will have to be filled in beyond Thirty-ninth Street, of course, and eventually we hope that Congress will see fit to abandon even more, as the necessities require. All we are asking now is that the Government engineers be taken off our backs and let us make such compensation as should be made to the owners of that land.

Mr. DENISON. You say there are no mosquitoes on the Chicago River?

Mr. MUNGER. The Chicago River is fairly pure where the water comes into it from the lake, and there are some mosquitoes there.

Mr. DENISON. But at this point it is so stagnant and so impure that it kills even the mosquitoes?

Mr. MUNGER. It is so foul that it kills even the mosquitoes. It has been said, and I think truthfully, that no living thing, animal or man, ever fell into Bubbly Creek that came out and lived.

Mr. DENISON. Judging from what I have seen of it, I think probably that statement is true.

Mr. MUNGER. I think it is true.

Mr. DENISON. That is all, sir.

STATEMENT OF MR. S. H. HODGE, INDUSTRIAL REAL ESTATE OPERATOR, CHICAGO, ILL.

Mr. BLACK. Mr. Hodge, you are a member of the Chicago Real Estate Board?

Mr. HODGE. Yes, sir; vice president and chairman of the industrial division.

Mr. BLACK. Have you made any special study of the industrial real estate conditions in the vicinity of Thirty-ninth Street and Ashland Avenue?

Mr. HODGE. Yes; I have been actively interested in locating industries in that territory for the past 16 years.

Mr. BLACK. How long ago was the central manufacturing district opened?

Mr. HODGE. In 1906, to the best of my knowledge. It may have been a little before that.

Mr. BLACK. And prior to that time it was an open prairie, substantially.

Mr. HODGE. Yes; a kind of dump.

Mr. BLACK. How many industries are there in there now, approximately.

Mr. HODGE. Something like 200.

Mr. BLACK. Have you had anything to do with bringing any of them into the district?

Mr. HODGE. About 85 per cent of them.

Mr. BLACK. And have you ever known of any industry coming into the district or staying away from the district because of the navigation facilities offered by the South Fork of the South Branch of the Chicago River?

Mr. HODGE. No, sir; I have not.

Mr. BLACK. Has that ever been discussed as a possible, desirable use?

Mr. HODGE. No, sir.

Mr. BLACK. Have you made a study of transportation problems of the industries that you have been responsible for locating in the district?

Mr. HODGE. Both from a railroad operating standpoint and transportation by surface lines for labor.

Mr. BLACK. Have you an opinion as to whether or not the closing of the South Fork of the South Branch of the Chicago River from a point 75 feet north of the proposed Pershing Road down to the east line of Ashland Avenue would in any manner affect the navigation or future navigation possibilities of the Chicago River?

Mr. HODGE. North of Thirty-ninth Street?

Mr. BLACK. From this point to here [indicating].

Mr. HODGE. Would the closing of that affect the navigation possibilities of the Chicago River?

Mr. BLACK. Yes.

Mr. HODGE. No; it is not a navigable stream now.

Mr. BLACK. Would it in any manner, in your judgment, affect the commerce of the city of Chicago or of the harbor of Chicago?

Mr. HODGE. Not in the slightest.

Mr. BLACK. Have you ever known during the period that you have been familiar with that territory of that river being used for a boat?

Mr. HODGE. I never saw a boat down there.

Mr. BLACK. Have you ever heard of a boat docking in there?

Mr. HODGE. No; I never did.

Mr. BLACK. Has that river ever been used, or that part of it, for the carrying of material for building or development in there?

Mr. HODGE. Not to my knowledge.

Mr. BLACK. What do you think would be the effect of closing that part of the river south of Thirty-ninth Street and to Ashland Avenue to the district generally, beneficial or otherwise?

Mr. HODGE. Decidedly beneficial.

Mr. BLACK. What would be the result on the property west of there with respect to its development?

Mr. HODGE. West of Ashland Avenue it would dispose of a nuisance, an odoriferous stream that is objectionable in every way. It would clear up an unsightly part of the locality that is not pleasing to the eye and add to the attractiveness of the adjoining territory.

Mr. BLACK. Would it add anything to its value as business property?

Mr. HODGE. As business property, I can not tell you; as industrial property, I do not think it would hurt it in any way, and if anything it would add to its salability, and that would create more demand for property, which would naturally cause a certain amount of increase.

Mr. GRAHAM. I think that is all, Mr. Hodge.

Mr. GRAHAM. The subcommittee has received by mail certain protests, which will be inserted in the record, one a protest by Dollie F. Leitch, one by F. L. Fink, and one from J. B. Adamson, and others.

Mr. DENISON. Mr. Chairman, I understand Miss Leitch is here and wants to be heard, and, if so, there is no use in inserting her protest.

Miss OLIVE LEITCH. That is the other owner who is interested. I am the other party who has an interest.

Mr. GRAHAM. The protests, then, may go into the record.

(The protests referred to follow:)

LOS ANGELES, CALIF., October 6, 1922.

ELTON J. LAYTON,

Clerk Interstate and Foreign Commerce Committee:

My protest mailed September 30; hold meeting open; present same as testimony.

DOLLIE F. LEITCH.

VENTURA, CALIF., September 29, 1922.

To the Interstate and Foreign Commerce Committee and Rivers and Harbors Committee, Sixty-seventh Congress, and Hon. William L. Sackett, Superintendent of Waterways of the State of Illinois:

We, the undersigned property owners and citizens of the United States, hereby notify you, and each of you, that we are unalterably opposed to and hereby protest against the sacrificing and destruction of any of the navigable

waterways of the United States, and especially of the west arm of the South Branch of the Chicago River in the city of Chicago and State of Illinois.

We hereby protest against the passage of H. R. 9049 or S. 3177 or H. R. 8648 or any other bills intended to destroy any part of the Chicago River, which is an important navigable waterway of the United States, under any claim or pretense whatever.

Our navigable waterways are our Nation's most valued and jealously guarded possessions and treasured assets, being a national defense, a war need and necessity, a protection and safeguard in times of war and strife, and also a source of enormous income and revenue to our Government and its people, the now already overburdened tax-paying public.

We respectfully request that this protest be placed in the official file.

F. L. FINK,
EDITH L. HALLOWELL.

PROTEST.

DIVISION OF WATERWAYS, STATE OF ILLINOIS.

To the Committees on Interstate and Foreign Commerce and Rivers and Harbors, Sixty-seventh Congress:

We, the undersigned property owners and citizens of the United States, hereby notify you, and each of you, that we are unalterably opposed to and hereby protest against the sacrificing and destruction of any of the navigable waterways of the United States, and especially the west arm of the South Branch of the Chicago River in the city of Chicago and State of Illinois.

We hereby protest against the passage of H. R. 9049 or H. R. 8648 or S. 3177 or any other bills intended to destroy any part of the Chicago River, which is an important navigable waterway of the United States, under any claim or pretense whatever.

Our navigable waterways are our Nation's most valued and jealously guarded possessions and treasured assets, being a national defense, a war need and necessity, a protection and safeguard in times of war and strife, and also a source of enormous income and revenue to our Government and its people, the now already overburdened tax-paying public.

J. B. Adamson, L. E. Lincoln, J. H. Drake, F. A. Crampton, Mrs. A. L. Love, Ramond D. Hammons, Earl Newell, John L. Nicholson, Jr., D. G. Parker, E. E. Paquette, Joseph M. Argabrite (ex-assemblyman), Charles H. Carne, Andrew W. Olsen, N. B. Mensing, John Flanagan, H. M. Armstrong, F. H. Hennion, Beatrice K. Blackstone, Emilio C. Ortega, Eva Rodriguez, Geo. L. Reese, H. R. Delavan, C. B. Corcoran, A. J. Derby, D. D. S., A. L. Moore, Dr. S. L. Stuart, F. R. Inman, J. E. Rapp.

LOS ANGELES HARBOR WORTH \$100,000,000 A YEAR.

What the Los Angeles Harbor means to the Pacific Southwest is set forth in an analysis prepared by the research department of the First National Bank of Los Angeles and the Los Angeles Trust & Savings Bank in cooperation with the college of commerce and business administration of the University of Southern California.

The study will be published for distribution at the time of the Pageant of Progress.

In this it is shown that the harbor is worth \$100,000,000 a year to this section.

The value of this report lies not only in the fact that it is the first detailed summary of the business of the harbor, but also in the fact that it represents the first active cooperation between business and academic interests in this district in the supplying of accurate and reliable information with regard to the economic progress of the Pacific Southwest.

The report includes 26 graphic charts depicting the detailed movement of commerce through the harbor, 2 maps showing the origin of foreign imports and destination of foreign exports; 2 detailed summaries showing the domestic commerce of the port by classes of commodities and types of commerce; lists of commodities passing through the port; and a 12,000-word summary of the results of the analytical studies of the commerce of the port.

The harbor commission of the city of Los Angeles is distributing 10,000 copies of this report; the chamber of commerce, through its foreign trade department, is distributing 8,000; the University of Southern California is distributing copies to a special list; and the First National Bank of Los Angeles, the Los Angeles Trust & Savings Bank, and the First Securities Co. are also making a special mailing to a list of several thousand shippers, merchants, banks, etc., throughout the world, which are interested in ocean-borne commerce.

In other words, this data is being used to bring the story of Los Angeles Harbor home throughout the world to all of those interested in maritime affairs.

The report first summarizes the tendencies of present-day economic developments throughout the Pacific Southwest, drawing attention to the fact that this great western empire is upon the verge of a new economic era, with the major evidence of this growth taking the form of the industrialization of the metropolitan area of Los Angeles, with the industrial plants of this district fabricating and marketing as finished goods the raw materials produced within the Pacific Southwest, so that the profits from the entire producing process are retained within the Pacific Southwest.

It draws attention to the fact that the harbor is directly responsible for the acceleration of this tendency toward industrialization and in many cases is the determining factor which insures the establishment of new industrial plants, inasmuch as, through the use of the harbor and Panama Canal, industrial concerns in this territory can lay down their goods in New York City at a price which will permit them to compete with any manufacturer 200 miles inland from the Atlantic seaboard.

The reports show that through the widening of markets for the products of this territory and through making possible the more economical distribution of goods the harbor is creating a trade tendency which leads to its being aptly termed "the front door of the Pacific Southwest."

It is also shown that everyone located in this western empire, whether he is an agriculturist, a manufacturer, distributor, or a retired home owner, and whether he lives in Los Angeles, Phoenix, Ariz., Salt Lake City, Fresno, or the Imperial Valley, has a direct and real interest in the development of the harbor and is profiting directly because of the existence of the harbor.

From the standpoint both of value and tonnage, the domestic commerce materially exceeds the foreign commerce, the foreign commerce amounting in 1921 to 642,021 tons of goods, valued at \$29,457,933, while the domestic commerce totaled 4,220,151 tons, valued at \$180,541,854.

Detailed analyses of the various commodities involved in this trade are then presented, showing that lumber and petroleum account for approximately three-fourths of domestic trade from the standpoint of tonnage, lumber amounting to in excess of 614,000,000 board feet, or in excess of 100,000 tons, and the domestic petroleum shipments exceeding 2,600,000 tons in 1921.

In spite of the fact that these two items bulk larger than any others from the standpoint of tonnage, there were still 524,278 tons of other goods handled in the domestic commerce, which were valued at \$121,982,223, so that these other commodities, while they represented only about one-eighth of the tonnage of goods handled through the port in domestic trade, represented in excess of two-thirds of the domestic commerce of the port from the standpoint of value.

The trade of the port in commodities other than petroleum and lumber is increasing more rapidly than the commerce in these two commodities.

PROTEST.

THE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE:

I hereby notify you and each of you that I have valuable vested riparian rights in the Chicago River, owning a large tract of land facing and abutting the west arm of the South Branch of the Chicago River, properly the South Branch of the Chicago River, south of Thirty-ninth Street and east of Ashland Avenue containing 3½ acres and known and described as follows:

Lot 5, circuit court partition of the northwest quarter of the northwest quarter of section 5, township 38 north, range 14 east of the third principal meridian, in the city of Chicago and State of Illinois.

I understand that bills H. R. 9040, 8648, and S. 3177 have recently been presented asking Congress to declare nonnavigable or to allow or permit the destruction or filling in of that portion of the west arm of the South Branch of the Chicago River, properly the South Branch of the Chicago River, which lies

south of Thirty-ninth Street and east of Ashland Avenue, in the said city of Chicago, in the State of Illinois.

The said above-described portion of the Chicago River now sought to be willfully, illegally, and unlawfully sacrificed and destroyed (through misrepresentation and otherwise) under H. R. 9040, 8648, and S. 3177 is an important river and railroad terminal, and extends into the very heart of the greatest beef and pork packing, manufacturing, railroad, and industrial centers in the United States. Said portion of the Chicago River is also a loading and transfer station or point, and has great accessibility, and the capacity for handling heavy merchandise and commerce such as is produced in the immediate territory, and for many years large Lake boats, barges, etc., were loaded with enormous quantities of pork and lard and other merchandise for direct shipment to Europe and other points from the docks or property of the undersigned protestor; proof of which is very clearly and definitely given and shown in letters written by Mr. Richard Fitzgerald, now president of the Chicago Junction Railroad, dated January, February, and April, 1900, to the protestor herein. Copies of which are now in the official files in the Federal Building, Chicago, and the waterways department at Springfield, and also Washington, D. C., which conclusively proves the great activity, depth, capacity, and commercial importance of the within described portion of the Chicago River. Said Fitzgerald letters also show and prove conclusively that the Chicago Junction Railroad and its allied packing interests through their many, varied, and persistent, and now already much commented upon methods and manipulations, and determined efforts to forever put an end to or destroy all waterway transportation or commerce (railroad competition) in the immediate vicinity and thereby prevent and deprive the undersigned and other protestors, such as the Hines Brothers Co., who also own a large dock or river frontage, and others from the full use and enjoyment to which they are legally entitled as vested riparian owners of the large income and revenue formerly derived or received from the above-described property, solely from its water front or docking facilities, and would also deprive other lessees of lands in the immediate vicinity of the benefits of waterway transportation or commerce.

Also said within described portion of the Chicago River now sought to be sacrificed and destroyed, has and possesses most unusual and important river and railroad terminal facilities as per several and repeated letters and protests of the Hon. William L. Sackett, superintendent of waterways of the State of Illinois, who, in official capacity and faithful duty to office has earnestly asked, urged, and almost implored the Congress of the United States to cooperate with and aid him, "the State of Illinois," in his honest and conscientious efforts to protect and preserve, rather than destroy, this very useful and navigable part of the Chicago River, which is an important national navigable waterway of the United States and the greatest commercial nontidal river of its length in the world and is also an open port of entry, and to still further prove its importance and public need, during our very recent war a huge quartermaster's department was located and established at this point and within 80 feet of the said within described portion of the Chicago River now sought to be destroyed, in which the Government of the United States expended many, many millions of dollars for warehouses, equipment, etc.

The sanitary district of Chicago seem to fully cooperate and work hand in hand with the Chicago packers, their Chicago Junction Railroad and allied private corporation interests in their persistent and determined, unwarrantable and unlawful efforts to absolutely destroy this important portion of the Chicago River (under the guise and pretense of public health and public benefit) which is but a mere subterfuge. The said sanitary district of Chicago in its official capacity for many years without any regard or consideration whatever for the public health or public convenience, knowingly and deliberately allowed or permitted the said Chicago packers to illegally and unlawfully pollute navigable waters of the United States by dumping their private industrial wastes into the above described valuable and important part of the Chicago River, which is absolutely against the law and against public policy, instead of compelling these Chicago packers to take care of their own private industrial wastes in compliance with law.

Said Chicago River and its branches and arms is a very valuable and important commercial, navigable waterway of the United States and is an open port of entry to the world's commerce, overwhelming and absolute proof of

which is clearly and definitely established by the historical and United States Engineers' reports, surveys, maps, plats, commercial pictures, excerpts, etc., which are in the official files in Washington, also the State of Illinois and city of Chicago, and in the archives of the Library of Congress at Washington and in the John Creaser and Newberry Library, and also in the Historical Society of Chicago and the public and private libraries in the city of Chicago and public and State libraries throughout the United States.

I hereby protest against any action being taken by Congress under any pretense whatsoever that will be intended to destroy any part of the Chicago River, a navigable waterway of the United States, for the benefit of the city of Chicago, in the State of Illinois, the sanitary district of the city of Chicago, in the State of Illinois, Chicago Association of Commerce, the Thirty-ninth Street Improvement Association, in the city of Chicago, in the State of Illinois, the Union Stock Yards and Transit Co., the Chicago Junction Railroad Co., or any other public or private corporation.

The city of Chicago and the sanitary district and the Thirty-ninth Street Improvement Association all have ample and sufficient ways and means of making public improvements without interfering with navigable waters of the United States. I hereby protest against the passage of H. R. 9049, 9649 or S. 3177 or any other bills intended to destroy any part of the Chicago River, which is an important navigable waterway of the United States, under any claim or pretense whatever.

Our navigable waterways are our Nation's most valued and jealously guarded possessions and treasured assets, being a national defense, a war need and necessity, a protection and safeguard in times of war and strife and also a source of enormous income and revenue to our Government and its people, the now already overburdened tax-paying public.

I respectfully request that this protest be placed in the official files.

And any attempt on the part of the Congress of the United States or any other official body created for the protection and preservation of our national waterways to abandon, declare nonnavigable, sacrifice or destroy any part of the navigable waters of the United States in any manner, or under any claim, pretense, or subterfuge whatever would be against public policy, wholly unconstitutional, and a national calamity.

The undersigned protector hereby notifies you and each of you, that on or about the years 1915 to 1917 the Chicago packers' allied interests in conjunction with the said above-mentioned sanitary district of Chicago and others, did through gross and misleading statements of facts relative to the origin, navigability, etc., of the west arm of the Chicago River, south of Thirty-ninth Street and west of Ashland Avenue, succeed in the illegal and unlawful destruction of about a mile of the said west arm of the Chicago River, west of Ashland Avenue, for the sole benefit and gain of the Chicago packers' private corporations, and by said unjustifiable and unlawful sacrificing of navigable waters of the United States has prevented and deprived the said undersigned protestor of her just and legal rights to the free use and enjoyment of the within mentioned and described portion of the Chicago River west of Ashland Avenue, as a vested riparian owner of property facing and abutting said Chicago River; and the protestor herein hereby asks and requests the Congress of the United States, its Interstate and Foreign Commerce Committee, or Rivers and Harbors Committee, or such other committee created for the protection and preservation of navigable waters of the United States to restore said portion of the west arm of the Chicago River, west of Ashland Avenue, to its former or original natural state and condition.

The protestor herein intends the within protest to be and act as evidence in hearing to be held October 5, 1922, at room 606, Post Office Building, Chicago, Ill., before the Interstate and Foreign Commerce Committee on any and all bills declaring portions of the Chicago River nonnavigable, and also to become an official and permanent record and notice to the Congress of the United States, its Interstate and Foreign Commerce Committee, now and at all future times to act and stand as my protest against any steps or action being taken toward the destruction of the aforesaid important part of the Chicago River which is an important navigable waterway of the United States.

Respectfully submitted,

DOLLIE F. LEITCH.

STATEMENT OF MISS OLIVE LEITCH, 702 SEBOR STREET,
CHICAGO, ILL.

Mr. GRAHAM. Miss Leitch, what is your business?

Miss LEITCH. I am not in any particular business, but simply take care of my own interests. I am a lawyer by profession.

Mr. GRAHAM. You, of course, understand what this bill is for?

Miss LEITCH. Yes; I do.

Mr. GRAHAM. The committee would like to have you proceed in your own way and make any statement you desire, condensing it as much as you can, so that the same territory will not be traveled over twice, but giving us your ideas in general, and you need not confine yourself to legal matters entirely, but give us your ideas about the matter.

Miss LEITCH. Well, first I object to the closing of that branch of the Chicago River as being closed to commerce by river transportation and as a water outlet to the open ports of entry of the United States for the following reasons: That this river was in its original state and stage a natural branch of the Chicago River. (Exhibit 1—6 maps attached.) It was one of the feeders that supplied the main branch of the river, and up until the present time, within a few years, it has been used for water transportation from its source to the present outlet. The source of the river was at Rockwell Street, which is 1 mile west of this present project. The section of land through which this portion of the river passes was originally owned by my great-grandfather (B. Wilder Exhibit 1—map 3), and from that time it has come down in the family until to-day, and during the time that my folks have owned this property they have rented the dock privileges to different industries, such as the Joseph Stockton Teaming Co. and various other teaming companies that were doing that kind of transportation business of loading and unloading barges at this dock from time to time, and have received compensation for it. (Refer to maps, Exhibit 1.)

The river has been destroyed under the pretense of its being an obnoxious river which will destroy the health of the citizens of Chicago, which is not true. The condition of the river has been created by the dumping into it of the trade wastes of the manufacturing district and the packing houses, and they now come in before the Government here and ask that this be abandoned as a navigable water of the United States, as a commercial outlet to practically 40 acres of land, which is capable of creating a large amount of commerce, because the sanitary district has refused or has not been called upon to clean these waters. The last cleaning or dredging they have done was in about 1911. (Exhibit 2—Maps of Lieut. Col. George A. Zinn, showing soundings and waterways.)

Up until this date I know of or have found nothing on record that will show that the sanitary district has done anything in clearing or clarifying the filthy condition of these waters, although under the rivers and harbors act of the State of Illinois and in accordance with the statutes of the United States Government, which are in section 6 of the statute, they are required to clarify and purify these waters. History as far back as 1830 has shown the Chicago River to be a natural course, a natural watercourse, with a clear flow of water, and the first soundings that were taken by the city of Chicago at the time when they were putting an assessment to dock this property, for which the taxpayers were assessed, the soundings were from 10 to 12 feet (Exhibit No. 3—contour map, 1889), and in and about this particular section ranged to at least 14 feet. (Exhibit No. 3.)

The docks at this time are not being used for the reason that the stockyards people have owned and controlled the property and have rented the entire property up to that which my folks now own on the South Branch of the Chicago River, and in the year 1900 my folks rented this land for dock purposes, and I wish to make of record photographic copies (Exhibit A) of letters written by the representatives of the railroad company at that time (Exhibit A) as evidence that there was transportation on this river less than 25 years ago, and the reason for the ceasing of this transportation is explained in these letters.

Mr. GRAHAM. The letters may be admitted in evidence.

Mr. DENISON. Who are the letters from and to whom are they?

Miss LEITCH. The letters are from Mr. Richard Fitzgerald, of the Union Stockyards & Transit Co., who was general manager at the time these letters were written, in the year 1900.

Mr. DENISON. Whom are they addressed to?

Miss LEITCH. To Mary A. Leitch, who was my grandmother, the owner of this property at that time.
(The letters referred to follow:)

EXHIBIT A.

CHICAGO JUNCTION RAILWAY Co.,
Chicago, January 20, 1900.

MARY A. LEITCH, *La Grange, Ill.*

DEAR MADAM: I find that some parties are utilizing property belonging to you on the north bank of the west fork of the stockyards branch of the Chicago River for dock purposes in handling freight to and from the various industrial plants located in the stockyards territory, which is transported by boats down the Chicago River to the docks in the vicinity of Rush Street Bridge. This business was formerly handled by rail out of the stockyards and netted us some revenue.

In view of the fact that your relations with this company have heretofore been most cordial and that we have paid you considerable sums of money, I beg to solicit your cooperation toward putting an end to this practice, which certainly is but a nominal benefit to you and means much to us.

Kindly advise if you are familiar with this matter and if you will assist us as requested.

Yours truly,

R. FITZGERALD, *General Superintendent.*

CHICAGO JUNCTION RAILWAY Co.,
Chicago, June 4, 1900.

MISS MARY A. LEITCH, *La Grange, Ill.*

DEAR MADAM: I wish to call your attention to the fact that the team business to the dock property in the vicinity of Fortieth Street and Ashland Avenue has again been renewed. I find the wagons of the Joseph Stockton Co. hauling this freight on the north bank of the river just east of Ashland Avenue Bridge.

I wish you would treat this information confidential and take such steps as you see fit to break up this practice. Kindly advise me of your action and oblige.

Yours truly,

R. FITZGERALD, *General Superintendent.*

CHICAGO JUNCTION RAILWAY Co.,
Chicago, February 22, 1900.

MISS MARY A. LEITCH, *La Grange, Ill.*

DEAR MADAM: Referring to recent correspondence in reference to certain parties utilizing your property for loading freight onto boats in the stockyards slip, beg to advise that from all I have been able to learn, this amounts to considerable business during the navigation season, when there is one boat and sometimes two that make daily trips. One of these boats, the *Wallace*, is a scow-built steamer, and another is a tug named the *Henry Hill*, which carries two barges. This is depriving us of a good deal of revenue, and in view of the relations existing between yourself and this company, I feel that you should assist us in breaking up the practice.

The McCurrie Transfer Co. teamsters, doing a business almost exclusively in the stockyards district, have been hauling this stuff to the point where it is loaded onto the boats. They drive across Ashland Avenue bridge, thence through the brickyards onto the ground which borders the river at that place. This business, it seems, has been conducted at various times and been loaded at various places, but has been driven from one point to another.

If you are willing to assist us in breaking up this practice, I suggest that when the navigation season opens we have a man on watch there to catch them in the act, so as to have something positive to work on.

Please advise what you are willing to do in the matter?

Yours truly,

R. FITZGERALD, *General Superintendent.*

MISS LEITCH. I would like to state that my land at this time is and has been used by the railroad company and other interests and remains undeveloped for any other commerce, but it is capable of further and future development and has an area of 155,000 square feet, or 3.1 acres.

MR. GRAHAM. How much frontage has it?

MISS LEITCH. About 200 feet of docking. My objection is that it is valuable, and not only that land but the surrounding land, for future development to myself or to anyone else. It is merely the destroying and polluting of the river that has caused these committees to come here to-day and make this demand upon the Government and upon the State of Illinois.

MR. GRAHAM. You probably would not remember it, but do you know whether 25 years ago this river was polluted the way it is now?

MISS LEITCH. No; I would not know that exactly, but it has been polluted for the last 15 years to my knowledge.

MR. GRAHAM. How long have these industrial wastes and sewage been dumped in there?

MISS LEITCH. For a great many years, to the best of my knowledge.

MR. GRAHAM. Has it been 20 or 25 years?

MISS LEITCH. I would say that it has been about 20 or 25 years.

MR. GRAHAM. How many people own this place with you?

MISS LEITCH. Myself and my aunt. I own a part interest. I have a 25 per cent interest and she has the other.

MR. GRAHAM. Is she the one whose protests are in the record?

MISS LEITCH. Yes. She is now in California.

MR. GRAHAM. Did you ever see any traffic on this branch of the river?

MISS LEITCH. Yes; I have seen fire boats go up the river, and there were barges going up there from the reduction plant that would go up to that point of the river and turn around and go back. They would make their turn in here.

MR. GRAHAM. There are some sunken barges up there; how long have they been in there?

MISS LEITCH. Those barges have been there only a few months, to my knowledge. We had a case in court before Judge Carpenter, which caused them to remove two barges about a year of two ago, and these are new barges, and we have protested against that to the rivers and harbors committee of Chicago and of the State, and also to the Government. They have just been put there recently.

MR. GRAHAM. By whom; do you know?

MISS LEITCH. It was said that one belonged to a man by the name of Chris Mamer, and the other—

MR. GRAHAM. The former clerk of the Supreme Court?

MISS LEITCH. I do not know who he is; but the other in there, I believe, is part of an apparatus they used when they put in the bulkhead at Ashland Avenue, and belongs to the city of Chicago.

MR. GRAHAM. That has been in there several years.

MISS LEITCH. It has been there since they filled that part of it, and I wish to state further that that part was only filled in 1918. Some gentleman said here 10 or 15 years ago, but it was just filled about 3 years ago.

MR. GRAHAM. Was there any protest at the time that was filled?

MISS LEITCH. There was protest and objection made to that, and they should be here in the record of the Government files, either in Chicago or at Washington; but they did it and gave no notice or anything of that kind.

MR. GRAHAM. There has been some intimation that has reached me that it was desired to abolish this end of this stream, because of some reason that the railroad companies had. Have you heard of anything of that kind, or do you know anything of that kind?

MISS LEITCH. If you will read these letters, marked "Exhibit A," you will see that the railroad company and the stockyards interests are anxious to get this part of the river closed and to have it as a solid piece of land.

MR. GRAHAM. The witnesses here to-day have stated—some of them—that the stockyards company always opposed the filling of these streams until very recently.

MISS LEITCH. I do not know what they may have done until very recently, but they are the ones who have polluted this stream.

MR. GRAHAM. Did the stockyards company originally build a slip on Thirty-ninth Street?

MISS LEITCH. Yes. In 1869 they got an ordinance passed before the city council to abandon Thirty-ninth Street and create a slip for the emptying in of the trade wastes and refuse from their packing houses; and that ordinance

said it was to remain open forever as a free canal to all boats entering our harbor and that it should be maintained as such forever. (Exhibit No. 4, plat and ordinance attached.)

Mr. GRAHAM. Was that a city ordinance?

Miss LEITCH. That was a city ordinance passed in 1869, and then in 1889 the city passed an ordinance for the improving and docking of this property—this South Branch of the Chicago River—as far west as Robey Street. (Exhibit 3), and was to be docked, and that assessment was spread and the docks were laid, and the property paid for the improving of the South Branch of the south fork of the Chicago River. The stockyards slip is between Halstead Street and Racine Avenue, and was a dug channel in accordance with the ordinance of 1869 (Exhibit 4), and was to remain open as a free canal to all boats entering our harbor forever, and was to be so maintained by the stockyards people.

Mr. GRAHAM. Was that ordinance ever repealed?

Miss LEITCH. Not that I know of. I can find no place where that ordinance has been repealed.

Mr. GRAHAM. Has it been repealed by implication through the passage of any subsequent ordinances of the city?

Miss LEITCH. I understand that the city has passed an ordinance, but so far as I know it made no reference to that particular ordinance. (Ordinance Apr. 11, 1921; Exhibit 5.)

Mr. GRAHAM. Do you think it was such an ordinance as would repeal the ordinance of 1869?

Miss LEITCH. I do not think so. (Apr. 11, 1921; Exhibit 5.)

Mr. DENISON. Miss Leitch, I know what the word slip means ordinarily, but I do not just know in what sense you are using it.

Miss LEITCH. A slip is a made waterway where the land is dug from a perfectly smooth piece of ground and excavated, and then the water is allowed to flow into it from an unnatural course or the water of the river itself to go back into that channel and create a water channel, just as the slip you have here in the city of Chicago on Chicago River going up to the lumber yards in different places here in Chicago. They are created by digging the land. The river is a God-made stream. It was here when the Indians were here in 1839. It is a natural waterway.

The natural flow of this stream is fed by the subterranean drainage of the country. This branch of the river was originally at the watershed and the water divided into the Des Plaines and into the Chicago River. (Exhibit 6, topographical maps.) To-day you have what these people are talking about, a stub end, from the destruction of the watercourse and the polluting of this watercourse. You asked just a little while ago what kept this water alive in here. The gentleman on the stand admitted there was not much of this flow of the sanitary district canal that keeps it alive. The river is supplied with water to some extent to-day because otherwise the water would have been dried up by the action of the elements.

Mr. DENISON. It backs up there from the Chicago River.

Miss LEITCH. Between 1915 and 1918 they closed and filled the river west of Ashland Avenue, making a dead end. The sanitary district, in changing the river's course, has changed the flow of the water, and when the locks at Joliet are closed it is higher and when they are open it is lower. It automatically acts on this water to-day and originally it was a natural stream.

Mr. DENISON. As I understand it, Miss Leitch, so far as our duties are concerned, we have to deal with it as it is now rather than the way it was in former years. From Ashland Avenue there is not now a river, is there?

Miss LEITCH. Yes; it is a part of the river.

Mr. DENISON. Beyond Ashland Avenue south?

Miss LEITCH. No; not beyond Ashland Avenue south. It is filled land.

Mr. DENISON. So that water no longer drains from that part of the city through this channel into the Chicago River, does it?

Miss LEITCH. Of course, that is a geographical matter. I have gone into the subterranean conditions there (Exhibit 6).

Mr. DENISON. At least the river bed has been filled?

Miss LEITCH. Yes.

Mr. DENISON. So that it comes to a stub end at Ashland Avenue?

Miss LEITCH. Yes.

Mr. DENISON. Now, I may be wrong about it, but I assume we have to deal with that condition as we now find it. Is your land the land that is designated on the blue print here as lot No. 5?

Miss LEITCH. Yes; right in here (indicating).

Mr. DENISON. The engineer testified there was only about 40 feet of dock on your land; was he wrong about that?

Miss LEITCH. The dock is not in a repaired condition.

Mr. DENISON. I understood you to say you had 200 feet of dock.

Miss LEITCH. I meant 200 feet of dock property. There has been a dock there. It has been used for dock purposes but it is in a decayed condition. However, some of it is still there.

Mr. DENISON. I am not talking about what has been there but have you any dock there now, Miss Leitch?

Miss LEITCH. There is no perfectly built dock there.

Mr. DENISON. I do not care particularly whether it is perfectly built or not. Is there a serviceable, commercial dock on your land?

Miss LEITCH. Not at this time, no; but in the future it is dockable. It is a piece of property capable of affording dockage.

Mr. DENISON. Then what you meant to say a while ago, as I understand you, was that you have property abutting on this stream which could be made into a dock or improved by a dock for a distance of 200 feet, is that it?

Miss LEITCH. Yes.

Mr. DENISON. Do you lease your docking privileges now?

Miss LEITCH. No; we do not. We have a condemnation suit with reference to this property with the Junction Railway Co.

Mr. DENISON. Just what do you mean by that?

Miss LEITCH. They attempted a few years ago to condemn this land for railroad purposes and they took us into court on two suits.

Mr. DENISON. Condemnation suits?

Miss LEITCH. Condemnation suits on 3 acres of land and then the two cases were dismissed and it stands that we have a suit for 34 feet only, so we have about 24 acres that are suitable for any other purpose in a commercial way.

Mr. DENISON. Do you mean that they began a condemnation proceeding for 34 feet?

Miss LEITCH. They started condemnation proceedings on 3 acres.

Mr. DENISON. But that has been dismissed?

Miss LEITCH. That has been dismissed, and now our property, as soon as we dispose of it and get the property in a different position, is suitable for commercial purposes of any other nature.

Mr. DENISON. You said something about their getting 34 feet from you, where is that?

Miss LEITCH. Right in through here (indicating). This is the railroad and they are using this 34 feet and this leaves this land in here for dock purposes or other purposes. The reason this land has not been developed from a commercial standpoint for river transportation since 1900 has been that this entire lot, comprising 3.1 acres, was leased to the Union Stockyards and Transit Co., and in 1915 the Chicago Junction Railroad Co. began proceedings over this whole lot containing 3.1 acres, and in 1918 those two cases were dismissed and then they began a suit for condemnation on 34 feet running parallel to and in a northeasterly direction to their right of way. The rest of the lot is without any suits against it. That is the reason why this property has not been rented or leased or sold for any other commercial development.

Mr. DENISON. Is this stub end of the creek between Thirty-ninth Street and Ashland Avenue navigable now for any practical commercial purposes?

Miss LEITCH. Yes; in 1918, under the order of Colonel Riche, the soundings were made and it had an average depth of 18 feet. (Exhibit map 7.) The last boat, tug, or barge which I saw navigating this stream was on May 4, 1918, which had a 9-foot draft and went up as far as Ashland Avenue bridge and turned back and went down the Chicago River. I have the photographs of that boat and barge taken at the time it was up the river. (Exhibit 8.)

Mr. DENISON. How long a boat was it?

Miss LEITCH. I think the tug was probably 25 or 30 feet, whatever the regulation boat is, and the flat boat was probably 50 feet in length, or 30 to 50 feet in length.

Mr. DENISON. What did they go up to Ashland Avenue for; do you know?

Miss LEITCH. Yes, because I had them go up there and navigate the stream as evidence of the fact it was navigable and a boat could stop and dock there. (Exhibit 8.)

Mr. DENISON. Then, as I understand it, you employed them to go up there.

Miss LEITCH. Yes.

Mr. DENISON. They went up and turned around and came back again?

Miss LEITCH. Yes; but one evening about 7 o'clock my aunt and I went up to see how many boats or barges came up to the Chicago reduction plant, and there were two with garbage on them came up and were unloaded, and the other barge came behind it. It could not start at Thirty-ninth Street, and it came up into these waters (Exhibit 9), turned around, and went back when there was a boat pulling into the dock. This other barge went around with the tug hitched to it and went out and went on back. I saw that with my own eyes.

Mr. DENISON. Miss Leitch, there has not been any navigation on there since you sent that boat up there?

Miss LEITCH. No; the navigation at that point is now stagnated, because the Central Manufacturing District owns the land on the one side and Swift owns the land on the other side. Mr. Hine's lot is only improved one-third or one-fourth, and our lot is controlled by the railroad company, and there is no commerce to call for it at this time. We can not deceive ourselves about that; but there are about 40 acres of land that is and can be supplied by water transportation right in this piece [indicating].

Mr. DENISON. But, as I understand it, all those interests that own the adjoining property on this stub end are in favor of the proposition involved here, all of them except yourself and your aunt who owns the 3 acres. They want this improvement made and want this end closed up; is that right?

Miss LEITCH. Yes; from the evidence here I guess that is what they want.

Mr. DENISON. You are a lawyer, as I understand it.

Miss LEITCH. Yes. I have not practiced. I just graduated last June.

Mr. DENISON. Have you ever looked up the question of title? Do you know where your title runs to in that creek?

Miss LEITCH. The title of that property runs from the Government—my great-grandfather—

Mr. DENISON. You misunderstood me. I do not mean that. Does your land extend to the water line?

Miss LEITCH. It runs to the center thread of the stream.

Mr. DENISON. Has there been any judicial decision upon that question?

Miss LEITCH. Yes.

Mr. DENISON. Are you basing your statement upon judicial decisions or on your own view about it?

Miss LEITCH. You mean as a riparian owner?

Mr. DENISON. I may say that that question of law varies in the different States, and I wanted to know whether there had been any judicial decision upon it. (Brief, p. 69.)

Miss LEITCH. The riparian owner right runs to the center thread of the stream and as riparian owners their property can not be taken. They have the right to the open water. (Brief, pp. 69 and 87.)

Mr. DENISON. The usufruct of the stream, as it is called.

Miss LEITCH. Yes.

Mr. DENISON. If the city of Chicago closes that stream at Thirty-ninth Street, they will have to pay the damages to you, will they not?

Miss LEITCH. So far as the financial end of it is concerned, that is nothing in comparison with the right to navigate from Lake Michigan to the St. Lawrence. Money would not pay for that. I could not go out and buy that land and have anybody give me what is already there. We all realize that a piece of property with water rights and rail rights is more valuable than with one of those elements taken out of it.

Mr. DENISON. But if they take that value away from you they will have to pay for it.

Miss LEITCH. Of course, under the Constitution of the United States, the law calls for that.

Mr. DENISON. The point I am making is this—I do not want to argue with you or try to confuse you, but I am asking largely for my own information: If that street is closed and this valuable right you speak of is taken from you, the city or some one will have to compensate you for it; is that true or not?

Miss LEITCH. That is true, if they want to use it for that purpose; but I wish to say that to put a bridge across Thirty-ninth Street is not a necessity to take my property. There is an adequate way. They have already had a bridge across that stream and (Exhibit I, maps 2, 5, 6) does the Government want to use this for a public purpose? Does the State of Illinois want to use it for a public purpose or does the city of Chicago want to use it for a public purpose? No. (Brief, p. 69.)

Mr. DENISON. That is a question, of course, with which we are not concerned.

Miss LEITCH. It is simply that they do not want to put a bridge over the river. Here I am with vested riparian rights, with all the rights, and I have the right to navigate on that water, and if they close that out I have the right to demand an outlet to the other watercourse. Then if they take this [indicating] they can take that, and if they take that then they can take the other, and they can take it to the sanitary district channel. This is not only a private right, but it is a right for me to do business with the other fellow. I have a right to the water above it here and to navigate that stream under the Constitution and under the laws of the Government. (Exhibit I, maps.) The Government has created laws to protect these rivers. Now, if this river has been taken advantage of, as it were, there are laws to protect it (brief, p. 69), just as it now stands, and it is not a question of money. It is the outlet of that waterway that is involved.

Mr. DENISON. If it is not a question of depriving you of a property interest, I can not understand upon what you base your objection. If you are going to be compensated for all the value you claim you have there, so you will get your full value out of it, I can not understand why you should want to object to it.

Miss LEITCH. I can not get the same value out of a piece of property without the waterway, and under the statutes of the Government and under the laws of the State we have a riparian right. We have a right to navigate that stream wherever it may go, and it is an open port. It is not something that has no outlet. It is not a thing that is just pocketed in there. Would you sacrifice a piece of land with a water right upon which you could go clear to the Mississippi River just simply because these people want to put a bridge through there? As to the maintenance of that bridge, it costs, according to the estimate of the filling of the lake front, \$1,800,000 to fill 1 acre of land. Who is going to pay for that?

Mr. DENISON. Miss Leitch, you have no rights there that can not be valued, have you?

Miss LEITCH. I have a navigable right.

Mr. DENISON. Of course, you understand that if the city wanted to take your entire property for public purposes, they could do so, could they not?

Miss LEITCH. Yes.

Mr. DENISON. And they would have to compensate you for that?

Miss LEITCH. Yes.

Mr. DENISON. Now, if they can take your entire property and compensate you for it, they can take your water rights and compensate you for that.

Miss LEITCH. But what are they going to put on the waterway?

Mr. DENISON. That is not the question. I say that if they can take your entire property if they think it necessary in the public interest, and condemn it and pay you for it, can they not pay you for your water right just the same as they could the rest of your property?

Miss LEITCH. No; the city of Chicago has not the power to do that. (Brief, p. 69.)

Mr. DENISON. You understand, then, that you have a right there which can not be condemned?

Miss LEITCH. Which can not be condemned for this particular purpose. If the Government wanted to put Government buildings on there they could condemn the land.

Mr. DENISON. If the city wanted to put a street through there for their purposes and in the public interest, they could take all your property there and condemn it and pay you for it, could they not?

Miss LEITCH. Yes; for street purposes.

Mr. DENISON. Or for any public purpose.

Miss LEITCH. Not when they have a remedy some other way.

Mr. DENISON. Of course, you understand that so far as this committee is now concerned, the only interest in the world that the Federal Government has in this matter is with reference to interstate commerce. If this is not a navigable

stream for purposes of interstate commerce, then the Federal Government has no interest in it.

Miss LEITCH. This is interstate commerce, and it is a question of allowing this to remain open for the future. I may never live to see what the future of this stream might be, but we are looking to the future as well as to-day.

Mr. DENISON. You understand that this committee has no authority to make any change or pass any legislation for the purpose of enabling them to open a street. That is not the question.

Miss LEITCH. It would be an enabling act. That is all it would be, for the benefit of the citizens of Chicago and not for an open port of outlet. (Brief, p. 69.) Money, so far as what the compensation would amount to, is nothing in proportion to the water outlet to a piece of property with dock interests.

Mr. GRAHAM. Now, Miss Leitch, proceed and make any further statement you care to make. We will try not to interrupt you any more. I may say to you, incidentally, that if you care to prepare any written brief or statement setting out your side of the case and will submit it to Mr. Denison or to myself, we will incorporate it into the record, if it is brief.

Miss LEITCH. I wish to put a few maps on record that are dated back to 1851, 1854, and 1858 (Exhibit I), showing the river in its natural state before the Chicago Union Stockyards or the Chicago Junction Railroad Co., and before the city limits of Chicago were extended, which show it to be the south fork of the south branch of the Chicago River.

Mr. GRAHAM. There is no question about that, Miss Leitch. Let me suggest to you, incidentally, that there is no question in the minds of the subcommittee about the fact that it was a natural watercourse. Nobody takes any issue with that, do they?

Mr. BLACK. Yes; in its original state it was not. We have affidavits here from people who knew it then.

Mr. GRAHAM. Then, if there is an issue on that, you can introduce whatever you care to put in the record. I took it that this was a natural watercourse that had been enlarged somewhat by digging and excavating, but if that is not true—

Mr. BLACK (interposing). It was a natural watercourse, but it never was navigable as a natural watercourse. (Brief, p. 69.)

Miss LEITCH. The Chicago River from its source to its outlet has been improved from time to time. In the year 1847, Daniel Webster said that the Chicago River was one of the greatest known tidal waterways of its length in the world and would one day make Chicago the greatest city in the world, which to-day, gentlemen, you are all seeing, and this is a part of it.

Mr. GRAHAM. Where did he say that?

Miss LEITCH. He said that at a rivers and harbors convention in 1847, held here in the city of Chicago.

Mr. DENISON. Who did you say said that?

Miss LEITCH. Mr. Daniel Webster, who was then the head of the first waterways movement to improve the Chicago River, and they did improve it, and in 1889 Chicago passed an ordinance to put docks on this property and to improve it. Now come these big interests here and they have crowded this situation out and say it is the stagnation instead of the creation of a great outlet, and these people here stand not in the public interest. They stand here simply because they have congregated to create a force behind this situation. There was a bridge [map, Exhibit I] in 1854 to 1869 across Thirty-ninth Street, and that will be shown in the business map of Chicago gotten out in 1883 and 1889, which shows a bridge at Thirty-ninth Street, and that bridge remained there up until about 1904. (History of Chicago River.) My grandfather had a business here in the stockyards and used to use Thirty-ninth Street. I am heartily in favor of the development of Thirty-ninth Street. We all realize that Thirty-ninth Street is a great artery, but I object to the destroying of this river in consideration of a bridge. One gentleman has said that that would cost \$3,000,000. I do not know what it would cost. It will cost something to take this water right away, and it will cost something to destroy a true outlet which is greater and bigger than Thirty-ninth Street. I do not know what the tonnage might be here. The State of Illinois and all of the people in Washington are developing a great waterway. We are less than a mile from the sanitary district that connects up the waterway.

I wish to put in another map. It is called the industrial development of Chicago. (Map, Exhibit 8.) These maps are all found in the archives of

the Library of Congress, in the Historical Society of Chicago, and also in the John Crearer Library, and I would like to have them accepted as official records.

Of course, gentlemen, the question of this waterway has to be taken into consideration in connection with its naturalness; what it has been as well as what neglect has caused it to be. This river has not the right to be polluted. It has a right to be protected. The sanitary district was created to take care of pollution, and under the law all the trade wastes of these packing interests have no right in this river and should be taken care of by some means or methods, individually and privately, and not be allowed to flow into a stream or waterway and allow it to be destroyed. They use the stream in this way and then say that it must be closed because it is against public health. (Brief, p. 69.) Here is a water, a river, that once stood alone clear and free. To-day it has thousands and thousands of industries around it. The river did not interfere with their locating there. If they were afraid of it, why were they there? They came to the river and they put in the pollution.

To-day they stand before the Government of the United States and ask you to cut this river out when they polluted this river without any right. They went to Mr. Baker, Secretary of War, and he said he would not interpose any objection. There was no act of Congress. Congress under the law could not give it to them, because they would have been told, "Go in and clean out and clarify the river which you have destroyed." They were riparian owners, but there was the right to navigate that stream belonging to the other owners.

Mr. GRAHAM. That is all true, but I do not think it is necessary for us to go into that now. All that we are after are the essential facts, and if you think you have stated all you care to bring to the attention of the committee I might suggest to you that this manuscript will be submitted to you for revision, and you may look it over and make such corrections and additions about the subject matter as you care to make, confining yourself, however, to this subject matter, and the same privilege will be extended to the other witnesses.

Miss LEITCH. I thank you. The only thing I wanted to say was on the question of why this has not been reopened. I put in that stockyards matter merely to show you that that is why it is not developed. On the river down here (Exhibit 1, maps 5-6) boats go up to Thirty-fifth Street. There is a big cooler (coal boat) goes up there every day, and there would be a cooler come up here, too, if it had not been destroyed. It has been suppressed rather than allowed to grow. (Exhibit A.)

Mr. DENISON. In looking over your remarks, if you find you have not included any essential facts you want to bring to the attention of the committee bearing on the subject you may insert them in the record.

Miss LEITCH. I may have gotten things a little mixed, but I hope I got the essential part of it in the record.

I thank you.

STATEMENT OF MR. J. B. O'CONNELL, ATTORNEY AT LAW, REPRESENTING HINE BROS. (INC.), CHICAGO, ILL.

Mr. O'CONNELL. I was requested to appear here by the president of the company, Mr. Hine. I do not know much about the facts to enlighten your committee, only Mr. Hine said he objected to the proposal to fill up Bubbly Creek because it would destroy the value of his property probably one-half, and that he looked forward to a system of national highways, and of course being on a natural highway at the present time he is loath to have it destroyed.

Mr. GRAHAM. How much land does he own there?

Mr. O'CONNELL. I think he owns 495 feet abutting on this so-called Bubbly Creek and running back to the E. J. & E. Railroad tracks, probably 95 or 100 feet deep and 495 feet east of Ashland Avenue.

Mr. GRAHAM. Is that near the Leitch property?

Mr. O'CONNELL. It is to the west of that property.

Mr. GRAHAM. Between that and Ashland Avenue?

Mr. O'CONNELL. Yes, sir. I think that is about all I know about it that will enlighten you on the subject. I know there have been several efforts to close up this so-called Bubbly Creek. The sanitary district three or four years ago attempted to take the property by condemnation for the purpose of estab-

lishing a plant there to catch the sewage from the city. Their plan was to have the sewers empty into a central point there and purify the water and catch the sludge and reduce it to fertilizer and glycerine, or whatever the parts would produce, and after we had been to a lot of trouble and expense they abandoned the project at that point.

Mr. GRAHAM. And began suit against your property?

Mr. O'CONNELL. No; they had not reached that point. We had taken it up with Colonel Riché, who was then colonel of Engineers here, and we had several hearings before him as to whether it was a navigable stream and whether it was a national highway. I never saw his report because the project was abandoned. Prior to that time, about 8 or 10 years ago, the sanitary district called all or a large number of the property owners, stockyards interests, in consultation, claiming they had filled up Bubbly Creek with their refuse and it had to be stopped.

We had several meetings about that, and finally the sanitary district compelled the interests out there to dredge the river and put in wire screens at the mouth of the different sewers that entered Bubbly Creek. Since that time I think the sanitary district has built a cesspool under Ashland Avenue where the bridge was, and a large sewer leading west from there, and as the sewage comes down Ashland Avenue into that cesspool the overflow flows over into Bubbly Creek. That is about all I know about the conditions. We feel that if Bubbly Creek is closed up it will depreciate the value of our property 50 per cent, and we will also have to stand an assessment for the improvement of Pershing Road, and we do not feel just at present that we have any recourse. The chairman here spoke about the city taking our property. It is true, of course, that under our Constitution if they take it they would have to pay compensation, but the city is not taking it. The United States Government is abandoning a national highway as of no further use, and, being the act of the Government, where would our recourse be?

Mr. GRAHAM. That question has occurred to me, and, although it is not a question for our committee to determine, here is the situation as I view it: If the land under the bed of that stream belongs to the riparian owners, then it would seem to me that some condemnation proceedings would have to be begun in order to even drain the water out of that pool or to compensate the owners for making the fill. How could the fill be made on Thirty-ninth Street without compensating the owners for taking away from them the right of egress and ingress on that water?

Mr. O'CONNELL. They would probably have to be, although east of Racine I understand the city is charging each person who dumps there 50 cents a load.

Mr. GRAHAM. There are many vexatious legal questions involved in the matter that I have not taken the time to try to unravel, and I do not think Mr. Denison has either. The only question in my mind is whether this stub end is of such value to the Federal Government for navigation purposes as to require the Congress to retain its right over it or whether we should waive our right, in view of the suggestions that have been made that it would lead to the sanitary and material betterment of this community to make this improvement.

Mr. O'CONNELL. There is no any doubt, Mr. Congressman, but what a bridge across Pershing Road or a roadway across there would be beneficial to that district, but there is not any doubt in my mind but what it will be just as injurious to Miss Leitch and my client, and they will be the sufferers, because they will be called upon to build this bridge practically by sacrificing their rights.

Mr. GRAHAM. In the final analysis it is a question of transportation and which is the greater good.

Mr. O'CONNELL. Yes; if our highways go through there is 2,000 feet of dockage here in Chicago, with the docks on the south side there now; if that goes through. I do not know whether it is a dream or whether it will be a reality.

Mr. DENISON. If what goes through?

Mr. O'CONNELL. The deeper waterway. We passed an act here under Governor Lowden and under Governor Dunn, too, for a deeper waterway from here to New Orleans. They are now advocating a route to the St. Lawrence through the Great Lakes which will connect Chicago. Now, Chicago being a great commercial center and the Chicago River being an artery that leads to all these industries along the river, and our property being on the river, of course we will have valuable property rights, and that is what we are trying to conserve.

Mr. DENISON. Do you think that that legislation which went through under Governor Lowden contemplated making a deep waterway on all the streams and branches that flow into the Chicago River?

Mr. O'CONNELL. I never looked upon this as a branch.

Mr. DENISON. That is what it is called. I do not know about it.

Mr. O'CONNELL. That is simply a name that has clung to it just like Bubbly Creek. It is a good deal like giving a dog a bad name and then having everybody want to throw a brick at it. It first began as a joke, calling it Bubbly because of the fermentation or the oil in there that would bubble up. Since then, as one of the gentlemen here said to-day, it has been the subject of politics. Whenever some one of our statesmen down there felt that he was in need of a little boost, he would jump on the subject of Bubbly Creek in order to carry himself into office. Now it seems that the business men want it and I have listened to them and I think their plea is all right, but it is going to hurt our property and it is going to hurt us very materially.

Mr. DENISON. I would like, while the committee is having this investigation, to get a little light on one question, and if you can furnish it to us, either yourself or through some one else, I would be glad to have it.

Mr. O'CONNELL. What is that?

Mr. DENISON. The effect of this legislation, Mr. O'Connell, if it should pass, would not put one ounce of water into the creek or take one ounce out of it. All we would do, if this legislation should be enacted, would simply be for the Federal Government to waive whatever right it might have over that stub as a means of transportation of interstate commerce. That is the only right we have there. If it is a navigable stream in fact and not in theory, or if it is a branch of a navigable stream which contributes to the navigability of the stream itself, then the Federal Government has certain jurisdiction over it so far as navigation is concerned. Now, the question involved in this bill is, Shall the Federal Government waive whatever right it has over that stub of the creek so far as interstate transportation is concerned? Now, if we should waive it, the creek is there just the same, and my own theory is that if you or Miss Leitch has any property right there that is of any value, neither the city nor anyone else can destroy it without paying for that value. If I am wrong about that, I would be pleased to be corrected.

Mr. O'CONNELL. That is true under our Constitution.

Mr. DENISON. Congress can not affect that stream one way or another so far as the water is concerned.

Mr. O'CONNELL. I think Congress could do just what we ask our city council here to do whenever a street is no longer to be used. They pass an ordinance saying that such and such street is of no further use and is therefore abandoned. Now, if Congress abandons a national highway, which a river is—

Mr. DENISON. If it is a navigable stream.

Mr. O'CONNELL. Yes; and I think even the testimony before you to-day shows that it is. A stream 175 feet wide with a swinging bridge on it and with sunken vessels in it would indicate that at least, and the further showing that the great stockyards there had been dumping their offal into that basin and making it a stench in the nostrils of the people. That might be a matter for Government inquiry, too, before they would decide to abandon a national highway. We contend that it is a national highway. I contended before Colonel Riché that it was. I had testimony to show that. We took it up several times before Colonel Riché when he was chief engineer of the harbor here, and I think I could demonstrate that even now.

Mr. DENISON. That it is a national highway?

Mr. O'CONNELL. Yes.

Mr. DENISON. That is what this committee is here for and you will have the privilege of doing that.

Mr. O'CONNELL. As I said to you, in opening my remarks, I really did not know the purpose of the meeting. Mr. Hine said: "Will you just report at room 906, Federal Building, and represent us there?" and I said: "What is the purpose of it?" and he said: "I do not know. You will probably learn when you get there." So I am here. I did not know about the bill and did not know it had been filed until—

Mr. DENISON. It would seem to me, then, that you had better have a conference with Mr. Hine and tell him to come here, and if he has any facts to present to the committee he can present them.

Mr. O'CONNELL. You see, I waited here waiting for developments, and I knew you were going to close to-day, so I could not get him down here to-day.

Mr. GRAHAM. We found it was impossible to close to-day, and if he wants to present anything we will be glad to hear him to-morrow. We want to get done as soon as possible, but we want the facts. We will be in session at 10 o'clock in the morning, and if you want to have Mr. Hine here we will be glad to hear him, or if you want to add anything to your statement.

Mr. O'CONNELL. I wanted to give you the benefit of the information I had for whatever it may be worth. I do not live in that section of the city, but I pass there and I could never differentiate between the smell of Bubbly Creek and the smell of the stockyards.

Mr. GRAHAM. There seems to be zones of smells down there.

Mr. O'CONNELL. Yes.

ADDITIONAL STATEMENT OF MISS OLIVE LEITCH.

Miss LEITCH. In regard to the Government control of that stream, in 1889 Congress passed legislation that the United States Government had control of all rivers and streams and other navigable waterways in the United States. So whether this is a dead end or whether it is a natural course it comes under the power and under the protection of the United States Government.

Mr. GRAHAM. Yes; we know that.

Miss LEITCH. Under the act of 1889.

Mr. GRAHAM. There is no question about that; otherwise we would not be here.

STATEMENT OF MR. WILLIAM L. SACKETT, SUPERINTENDENT OF THE DIVISION OF WATERWAYS OF THE STATE OF ILLINOIS.

Mr. SACKETT. I may state to the gentlemen of the committee that I am here by request and under instruction of Colonel Miller, the director of the department of public works and buildings, whom you have communicated with about this situation. He was unable to be here and asked that I come to give such information as I might in this connection. I realize that I am in something of an unpopular atmosphere.

Mr. DENISON. Not with the committee, Mr. Sackett.

Mr. SACKETT. No; I did not intend that; but in view of the presentation of the matter here in behalf of closing this river, and yet realizing that I am convinced that there are public interests involved here that should be protected and should be presented to the attention of the committee for consideration.

This matter first came to my official attention some three or four years ago when I first undertook the work that I am now doing for the State by way of objections. It has since come in an informal way by reason of the presentation of the desire of those interested here in closing this portion of the Chicago River; and, if you will pardon me, I think it a misnomer to have the record show a reference to Bubbly Creek as perhaps signifying a small, insignificant stream, or part of the river, rather than designating it as the west arm of the south fork of the Chicago River.

I may say, for the information of the committee further, that in the last three years there has been a general disposition evinced in Chicago to fill up a number of the navigable canals and slips along portions of the Chicago River, as well as to fill this portion of the Chicago River. If this portion of the Chicago River and other portions are to be filled it is only a question of a short time before there will be little left for purposes of navigation, and public rights will be divested and riparian owners, as I understand the laws of the State, will obtain valuable areas of land by being permitted to fill up the river bed.

Of course, I am not here to interpose objections to the people of Chicago having a street opened in this particular vicinity. I agree with them in the estimated cost of a bridge or the maintenance of a bridge across this stream at that point. I believe, however, it is as tenable with reference to the filling of other portions of the river in order to eliminate the cost and maintenance of bridges as to maintain that this portion of the river should be closed for that particular purpose at this point. I have no official figures to offer on the cost of a bridge.

It has been presented to the committee as between two and three million dollars. My best judgment would be that a swing or inexpensive type of lift bridge could be erected at this point over this portion of the river at the cost of not over three-fourths of a million dollars, and if it is a fact, as contended,

that there is no navigation beyond Thirty-ninth Street in this portion of the river, there would be no occasion for maintaining three crews to operate that bridge, because when the navigation came which would require the swinging of that bridge it would be very easy to then put the crews at work.

I feel that the State of Illinois has a right and an interest in this portion of the Chicago River because it is a part of the navigable waters of the United States. I believe this committee should consider merely the local interests of people living in Chicago, but I believe there is the broader interest of the people of the entire State.

Mr. DENISON. Right there, do you think we ought to consider the interests that have just been speaking, Miss Leitch and Mr. Hine, which are purely local interests?

Mr. SACKETT. They have a vested property right, which, as I understand, as you have stated to them, they can not be divested of, and that brings to my mind this situation: Under the decisions on the law of this State, as I understand them, a declaration by Congress that this portion of the Chicago River is nonnavigable would mean to divest the public of its present rights for navigation or otherwise in the stream, and if this portion of the stream is filled, then the bed of the stream will revert and become the property of the riparian owners.

Mr. DENISON. That is true if the title of the riparian owner goes to the middle of the stream.

Mr. SACKETT. I understand that it does, under the decisions of the courts of this State, and there are numerous decisions to that effect, namely, that the public simply has the right of easement of navigation. I think you would deprive the State of Illinois of some rights. I think you would impair its right to some extent by declaring this portion of the river nonnavigable because you would then limit the control of the State, in my judgment, only to certain rights as to flood water disposal, or something of that nature, under the laws of this State.

Mr. GRAHAM. The rule, as I understand it, is different in flowing streams and in lakes. In lakes where the lines are meandered along the edge, if the lake is drained, the bed of the lake belongs to the State.

Mr. SACKETT. Yes; that is true.

Mr. GRAHAM. But in flowing streams, if the stream is taken away then the riparian owner goes to the thread of the channel.

Mr. SACKETT. Yes, sir; that is right, I think.

Mr. GRAHAM. So there is a distinction in that respect.

Mr. SACKETT. We have a number of decisions by the courts of the State of Illinois, but the most sweeping decision on this entire proposition is a recent one by the United States Supreme Court in what is known as the Economy Light & Power Co. case, and if you are not familiar with that I would like to submit to you a copy of that decision.

Mr. DENISON. I would be glad for you to do so, and will you also give the citation to that decision?

Mr. SACKETT. I will give you the citation later.

Mr. DENISON. Has the State of Illinois, as a State, any rights whatever in that part of the river as distinguished from the riparian owners or the United States Government?

Mr. SACKETT. I think the rights of the United States and the State are practically the same.

Mr. DENISON. The United States has only such rights as it acquired under what is called the commerce clause of the Constitution, namely, the right and the power to regulate commerce between the different States. That is the only power in the world that the Federal Government has over that stream.

Mr. SACKETT. Well, the State has no general rights in the stream as distinguished from a private right, except the same as the Federal Government has—the right of easement of navigation and the right to see that there is proper drainage or flood-water disposal—and that is all that its legislature vests in the departments of the State government, a control representing merely public interests of navigation, public interests of flood-water disposal, drainage, and associated interests; and when Congress deprives this stream of the public right or easement of navigation, as a declaration that it is nonnavigable will do, my best judgment is, as I understand the law of this State, you are practically divesting the public of rights and vesting them in individuals or in riparian owners to the center of the thread of the stream.

Mr. DENISON. If you have any judicial decisions to that effect, speaking for myself, I would be glad to have them. I have read a good many of the decisions of the Supreme Court on that question, and the decisions are that in this country the sovereignty over navigable streams is in the States, except in so far as they have delegated that authority to the Federal Government under what is known as the commerce clause of the Constitution. You will find it stated over and over again by the Supreme Court that the sovereignty over the navigable streams is in the States themselves, except in so far as they have surrendered it to the Federal Government in what is called the commerce clause of the Constitution, wherein it says that Congress shall have the right to regulate commerce with foreign nations and between the different States.

Mr. SACKETT. You are a lawyer, Congressman, and I am not.

Mr. O'CONNELL. I think Kent says they are to be considered as national highways, and as such they are to be under the control of the National Government.

Mr. SACKETT. The State of Illinois is engaged now in the construction of what is known as the Illinois waterway, contemplating an expenditure of practically \$20,000,000. That improvement means an improvement of the Des Plaines River from Lakeport to its confluence with the Illinois River a few miles west of Joliet, and then the Illinois River practically from that point to La Salle, where navigation on the Illinois River is now possible from that point to the mouth of the Illinois and then down the Mississippi to the Gulf.

It has been stated here a number of times, and you have asked the question, whether there has been any navigation on this particular portion of the Chicago River, and the answer has been that there has been no navigation on this portion of the river; and that would apply also to some other portions of this same part of the Chicago River since 1901 or 1904 or 1905. The explanation of that lack of navigation, I think is this, largely: When the sanitary district was opened and the water turned down, in 1901, the opportunity for navigation in the Des Plaines River, which was then constituted a part of the Illinois-Michigan Canal from Lockport to Joliet, was interfered with to such an extent that navigation was absolutely interrupted for a period of three or four years because of their work, with the result that a great deal of navigation that came here to Chicago during that period stopped; some of the boats navigating the Illinois-Michigan Canal went down on the Illinois River and some of them are still engaged on the Illinois River.

The work of improvement for the Illinois waterway, at an estimated expense of \$20,000,000, is to restore the opportunity not only of the navigation of that period which was interrupted but the opportunity of much greater navigation—navigation that will permit of transportation in fleets, without breaking bulk, of relatively eight to ten trainloads of freight.

One reason, as I am instructed to state heretoday, why the State is objecting to the passage of this bill and the declaration that this portion of the river is not navigable, is because of the work of the State now in progress, it being desired to wait the completion of it to be in the next three or four or five years, before the State is deprived of any portion of the Chicago River now watered or any of the slips, or deprived of its opportunity for harbor or terminal facilities for boats during the winter season at this end of the line.

Terminals have got to be provided and every foot of this river that is filled is depriving the State of Illinois, and the city of Chicago also, of its opportunity of facilities here for such boats as may navigate between the Lakes and the Gulf, and the mind of Colonel Miller at this time is that if navigable water now existing is to be closed in the face of the efforts of the State to provide opportunities for navigation by water with this expense and later to come to Chicago, for instance, and find that it is compelled, under great expense, to buy back for terminal or harbor facilities land or property or to enlarge or extend branches of the river that are already in existence but which are closed as the result of legislation or otherwise.

There is another feature that I would like to call the attention of the committee to, which has not been presented, and perhaps the committee is not familiar with it.

Mr. DENISON. Before you proceed further, Mr. Sackett, of course, any action that might be taken by Congress can not affect any right which the State itself might have in this river. If this Congress should waive any jurisdiction of the Federal Government over this part of the river, has the State any rights there which it can itself protect in the courts?

Mr. SACKETT. I would say no. I would say that the State has no rights there except the public right of an easement of navigation same as the Federal Government. The laws are such that the State has nothing to say about navigation of vessels over navigable waters even within the limits of the State. The Federal Government absolutely issues all regulations for navigation and absolutely controls all navigation.

Mr. DENISON. That is true by reason of the fact that the States in the Constitution surrendered that power to the Federal Government, but where the Federal Government surrenders it back to the States, then why have not the States the power to control just the same as the Federal Government has now?

Mr. SACKETT. When you declare this stream nonnavigable I think you deprive the State of any control so far as navigation is concerned and you have deprived the State of any public rights it has based upon that right of navigation. That is my best judgment about it.

Mr. DENISON. You do not know whether there have been any judicial decisions on that?

Mr. SACKETT. I am perfectly willing to make some investigation along that line. I am tied up now in a case involving the closing of a slip here on the river that we are combating and that is going to take a week or ten days of my time, but I would be very glad then to give you any information I can along that line.

Mr. DENISON. What is that litigation that is pending?

Mr. SACKETT. That is a proposition where property owners are trying to close, or desire to close, one of the slips on the Chicago River, which they claim to have been privately constructed and which the State claims has been opened to public use and navigation for more than 20 years, and therefore the public has acquired a right of navigation.

Mr. DENISON. If the State is claiming that, are you not contradicting yourself when you said a moment ago that the State would have no rights?

Mr. SACKETT. We are asserting that public right on the part of the State because of the right of navigation. It is based on navigation.

Mr. DENISON. And that case is now in the courts?

Mr. SACKETT. We expect to have that case on trial next week, but the case, of course, will go to the State supreme court. We claim it has been dedicated to public use and now they can not deprive the State of that use.

Mr. TAYLOR. Do you contend that the Federal Government has any jurisdiction over that slip?

Mr. SACKETT. I think the Federal Government has some jurisdiction over it in certain instances, but so far I have not been able to convince them of that fact.

Mr. TAYLOR. Has it not already been decided in the case of the collateral channel of the Sanitary Canal that the Federal Government has no jurisdiction of that?

Mr. SACKETT. No, sir; the Federal Government controls it for purposes of navigation.

Mr. TAYLOR. The collateral channel?

Mr. SACKETT. What do you mean by the collateral channel? The Sag Canal?

Mr. TAYLOR. The connection between the river and the canal through which the water was let in.

Mr. SACKETT. The law of Illinois authorizing construction of the sanitary district channel provides it shall be subject to control of the Federal Government. I would assume that when that channel is connected it is connected with navigable waters and is navigable; in fact, the Federal Government controls all of that channel and connections for the purposes of navigation.

Mr. GRAHAM. Who is the attorney for your board?

Mr. SACKETT. The Attorney General.

Mr. GRAHAM. Can you not have the attorney general prepare you a brief statement of such legal authorities as you have bearing on that subject and transmit that to us?

Mr. SACKETT. I will be glad to take the matter up with him, but I do not know just how soon we can accomplish that.

Mr. GRAHAM. The report of this committee will probably not go to Congress before the short session in December, and you will have a considerable length of time to prepare it.

Mr. SACKETT. I will be glad to undertake it.

Mr. GRAHAM. We ought to have it as soon as possible so that we can give it some attention. We would like to have a short brief of the legal authorities bearing on this contention of yours.

Mr. SACKETT. I will be very glad to furnish that to you.

Now, to go on, I want to call your attention to the fact that in an official capacity I have been required to make an investigation of practically all the navigable waters in and adjacent to the city of Chicago. This includes the Chicago River, this particular portion of the Chicago River under discussion, as well as Lake Michigan, Calumet Lake, and the proposed Illiana Harbor development.

The lake front of the city of Chicago, so far as opportunities for navigation are concerned, is controlled, 85 per cent at least, by parks or railroads, and the public to that extent is deprived of opportunities of navigation by water and dockage. You will find along the Chicago River a large proportion of the opportunities for dockage, wharfage, and the interchange of traffic controlled by the railroads.

Mr. DENISON. Is it so controlled that the public could not get it, if it wanted it?

Mr. SACKETT. It is so controlled that the railroads own that property and therefore they are riparian owners, and they control portions of the river here so that you could not utilize the portions which they own, nor could you utilize portions that other riparian owners own for any public docks without either rental of the property or purchase of the property from those particular parties.

It was suggested, I think, by the gentleman who just preceded me, that if you declare this portion of the river nonnavigable you will deprive the public of the right to at least 2,000 feet of dockage here. If, in the abandonment of this particular portion of the river, the bed of this stream could be retained for public use, I doubt if the State of Illinois would have any serious objection to that abandonment.

Mr. DENISON. That is the legal question that you were going to look up for us.

Mr. SACKETT. Yes; but, going back to the fact that the public has been largely deprived by the conditions I referred to of opportunity of general navigation, I want to call your attention to where this portion of the river goes that they are asking you to abandon. It leads into the heart of the stockyards district; and when you consider that the railroads to-day are charging the shippers of live stock anywhere from 40 to 86 cents a hundred to transport that live stock a distance of 150 miles—say, from Peoria—when it could be transported by water through the medium of this portion of the river direct to the yards of the stockyards company and unloaded for, probably, 15 cents a hundred, you can see that you have something to consider as to the rights of the citizens in this portion of the river—the rights of the public, I mean, the people of the United States and the people of the State, as well as considering the immediate local references to expense in the maintenance of a bridge across this stream.

It costs now from southern Illinois for the transportation of coal about \$2.50 a ton, and yet our department has information from the coal operators of southern Illinois that they will be very glad to take the joint haul by rail over to St. Louis and put that coal from southern Illinois into Chicago on boats at \$1 a ton. That does not apply so much to this particular branch of the river as the transportation of live stock; and recently down below Peoria I was advised by a number of farmers there, one having some ten or fifteen thousand acres of land and a very large stockraiser, that he could load and would load the hogs he raises each year on boats and transport them here to Chicago and to the stockyards, as I say, at a very small fraction of cost, in comparison with the charge made by the railroads, plus the advantage of having water to wet the hogs on the way up and until he could deliver them here.

If this portion of the river is abandoned, with this territory surrounded by railroads, you are simply giving that much greater advantage to the railroads surrounding them here and depriving the public of an opportunity of navigation to this very material and important point, from the stockyards district point of view or where the farmer can dispose of his stock; and I have no need to say to you gentlemen anything about the burdens under which the farmer is suffering to-day in a desire to get his grain and his live stock and other products to market by a much cheaper route, which can be provided by water, and

will be provided, as I expect, by the construction of the Illinois waterway project, now in progress, and on which one and a half millions have already been spent.

If it does not, then, of course, the State would not enter or interpose any objection to this proposition, or if the bed of the stream, after your act of abandonment, so to speak, by declaring its nonnavigability, could be preserved for public use and purposes or for docks and buildings. I was up in this portion of the river on a tug at the time I spoke of this inspection trip and went part way up there and turned around in a boat of about 12 feet draft. The captain of that boat said that the draft of his boat—15 feet—was too great to go all the way to Ashland Avenue [indicating on map], but it was navigable for 10-foot draft of boat all the way [indicating]. The depth provided for the Illinois waterway project is a minimum of 8 feet, so that the depth already in this channel is greater than we are proposing for barge use all the way down through the valley and even to New Orleans.

The representative of the Chief of Engineers of the Federal Government on the Illiana Harbor Commission, of which I happen to be a member, in a preliminary report which, of course, is confidential at this time and may be subject to change, after going over this situation from one end of the city of Chicago to the other and over the river and the lake and all, pronounces the abandonment of public rights of navigation as almost criminal, in his judgment, and that will undoubtedly be incorporated as a part of the report of this commission, although, as I say, at this time it is confidential and has not been passed upon.

Mr. GRAHAM. What commission is that?

Mr. SACKETT. The interstate harbor commission, representing the two States. A complete investigation of all the opportunities of terminal facilities and harbor facilities was gone into in this investigation and on this trip which I spoke of.

About 1908, when the sanitary district dredged this portion of the river, it had a depth of approximately 20 feet. It has been gradually filled up because of the disposal of the industrial wastes from the stockyards.

Mr. DENISON. Under what authority was that part above Ashland Avenue closed and filled up?

Mr. SACKETT. I could not tell you, unless it was by Federal authority. It was before I had anything to do with this work or before the State had a law that had anything to do with these matters. Possibly Major Putnam can answer that question.

I want to say a word about the pollution of this portion of the stream because it has been urged here as one of the reasons why this should be declared non-navigable and abandoned and a bridge eliminated at this point. I think they can have their streets and should have their streets, but they can maintain a bridge at that point without interfering with any great public rights. I want to say further that two years ago when application was made for filling the other arm of this river, the State granted a permit in connection with the Federal Government filling that portion of the river, but at the hearings which the State had at that time, the question was specifically brought to the attention of the petitioners, who seem to be a different set of gentlemen from those here today, as to whether or not, if the permit was granted, to fill that portion of the river, they would not be asking in a short time for a permit to fill this portion of the river, and the answer was they would not; that they would bridge this portion of the stream and it was largely with that understanding that Governor Lowden at that time authorized the permit for filling that portion of the stream; that is, with the understanding that this portion leading up to the stockyards would be maintained.

Mr. DENISON. What portion was it that was filled?

Mr. SACKETT. I think this is the west arm and the other was the east arm.

Mr. GRAHAM. You mean the stockyards slip?

Mr. SACKETT. No; the east fork of the south branch.

Mr. GRAHAM. The east fork was the one that ran up toward the stockyards slip.

Mr. O'CONNELL. It is what is now Thirty-ninth Street.

Miss LEITCH. That was the stockyards slip.

Mr. GRAHAM. Mr. Sackett, is that statement or representation that was made to the governor of the State of record any place?

Mr. SACKETT. No, I think not; no written record was kept of that hearing, but we were there.

Mr. GRAHAM. You were there?

Mr. SACKETT. Yes, sir; I was there. I was the one authorized to issue the permit.

Mr. GRAHAM. What official position did you hold?

Mr. SACKETT. Superintendent of the division of waterways, the same as now. Our department issues those permits. Of course, there has been a change of administration since then. One reason for issuing the permit was that the stockyards slip, so called, although the east arm of this part of the river, and to allow it filled, would make a street extension of two to three blocks, which was going to be used for a public purpose, and in addition, it permitted the extension of this outlet from the lake, putting some pure water here [indicating]. I will furnish a copy of the State permit.

I want to direct the attention of the committee to the fact that this pollution of this portion of the river here from stockyards waste is not confined by any means to the limits of the city of Chicago. It is traveling down the sanitary district channel and the Illinois River, and is polluting the entire stream to an extent that is seriously interfering with navigation of boats thereon because of the stench and odor, especially during the low-water periods of the summer months, and that is becoming a very serious problem. There are marked evidences of this pollution below Havana at the present time. It has now gone that far, and of course there is no fish that can live in this water.

Mr. GRAHAM. You mean that fish life is being destroyed in the Illinois River?

Mr. SACKETT. Absolutely. There are no fish north of Peoria in the Illinois River because of this pollution; but that is not the only trouble. It has deprived the people of the entire State of their legitimate use of that stream and the water for domestic or pleasure or any other purposes.

Mr. GRAHAM. I agree with you that the present disposal of sewage in the city of Chicago is absolutely wrong, but we are not passing on that, Mr. Sackett.

Mr. SACKETT. No; I am just illustrating this point to you. If you place a bulkhead at Thirty-ninth Street, as proposed, and this portion is filled, as I understand the plan to be, where is the stockyards sewer outlet that is now existing and makes this a dead end—that is urged upon this committee as a legitimate ground in the interest of health for closing this part of the river—where is that sewage going?

Mr. GRAHAM. I asked that question of some one a little while ago, and they said they would run it into the sanitary channel.

Mr. SACKETT. There is not any sanitary channel to run it into, except as it runs into the river now, down this river into the sanitary channel; that is, down to the main portion of the river and then into the sanitary channel 2 or 3 miles from this point. If you abandon this part of the river and allow the bed to be filled between Ashland Avenue and Thirty-ninth Street, as proposed, the present sewer outlet which now carries the waste and sewage of the stockyards plan into the river at Ashland Avenue will, before the bed is filled to Thirty-ninth Street, be unquestionably extended to discharge into the river at Thirty-ninth Street unless Congress in passing the act of abandonment proposed prohibits this sewer outlet to be extended to discharge into the river at Thirty-ninth Street. If the sewer outlet is permitted to be brought from Ashland Avenue, where it now is, to Thirty-ninth Street, you are not remedying the existing situation nor preventing the continuation of a condition alleged to be a nuisance. On the contrary, you are simply transferring the nuisance to a point where more damage will result because there are more business enterprises established in the vicinity of Thirty-ninth Street and from that point to the mouth of the river than exist in the area between Ashland Avenue and Thirty-ninth Street.

I understand you gentlemen have been out to view that portion of the river between Ashland Avenue and Thirty-ninth Street. No doubt you observed the grease and scum on the surface of the water, and, seeing it, you may have been impressed with the suggestion there was considerable odor from it. There is undoubtedly odor from this water standing in there, but I want to remove the impression that all the odor comes from the water or the surface condition of it. If you are there at the right time you will find that the greater part of the odor comes from the garbage reduction plant of the city of Chicago, at Thirty-ninth Street, at the point where they ask to put a bulkhead and fill to avoid a bridge, and unless this garbage reduction plant is to be abated and removed from that vicinity the odor will still remain and the nuisance of the sewage collecting on the surface of the water will merely be transferred to

another point and continue. If you enact the law proposed declaring this portion of the river nonnavigable, and a bulkhead is put in the river at Thirty-ninth Street preliminary to filling up the bed of the river between Ashland Avenue and Thirty-ninth Street, I make the prediction you will have the same condition which exists between Ashland Avenue and Thirty-ninth Street existing a thousand feet in the stream below Thirty-ninth Street that you now have above Thirty-ninth Street. Mr. Munger, one of the gentlemen who appeared here this afternoon, was frank enough to say they were asking you only to declare this portion of the river between Ashland Avenue and Thirty-ninth Street nonnavigable now, but when that is done they will ask you to declare another thousand or two thousand or more feet nonnavigable, until the entire south fork of the south branch of the Chicago River is closed, and other witnesses have been frank enough to say the same. If Congress declares the portion of the west arm of the South Branch of the Chicago River between Ashland Avenue and Thirty-ninth Street nonnavigable, I believe it will be such an abandonment of the public right of navigation as to seriously handicap the State of Illinois if not entirely defeat the State in its efforts to maintain public waters naturally navigable.

The Federal Government and the State have been called upon and will be called upon to expend large sums for dredging, deepening, and improving rivers, channels, and harbors and it is now proposed to call upon both the Federal Government and the State for the expenditure of large sums for extending harbor development which will mean excavation and improvement in that manner of waters not in their natural state capable of affording commerce required by present-day demands, and it is difficult to understand why Congress or the legislature of the State of Illinois should acquiesce in demands to close up a portion of a river navigable in fact when the same local interests asking such action are also asking the expenditure referred to to enlarge the navigable capacity of waters not naturally navigable to the extent of this portion of the river sought to be closed to navigation. There seems no question from the evidence presented to this committee that the intent is to close the river between Ashland Avenue and Thirty-ninth Street by filling the bed. If this is done I am convinced under the laws of the State of Illinois the riparian owners will be given a large property area. The abutting property ranges in value from \$1,000 to \$10,000 per acre, based upon existing assessed valuations, and the committee is in position to take cognizance of the fact that assessed valuations do not usually indicate the real value.

Aside from the elimination of a bridge at this point, there can be no possible public benefit resulting from the passage of the proposed bill by Congress. On the contrary, the people of the United States and of the State of Illinois will be deprived of the opportunity to have 2,000 feet of river for wharves and docks and the opportunity of navigating boats directly to and from this portion of the river to deliver live-stock shipments at the gates of the stockyards. This portion of the river is a part of the navigable waters of the United States.

As a matter of fact the water of the Chicago River under present conditions is the water of Lake Michigan. This portion of the river has a depth which makes it available for navigation. It has been shown that it but recently had a depth of 20 feet. A part of this depth has been taken from it merely because there has been a discharge of sewage into it and the correction of the condition which is in violation, both of the Federal laws and the laws of the State of Illinois, but which, I assume, has been tolerated only with the view that the Sanitary District of Chicago, now handling the sewage problems of the city and seeking modern means of disposal, is expected to include sewage disposal that will clear up this portion of the river. There has been some claim before this committee that this part of the river was not navigable in its natural state. If this is a basis for a declaration of abandonment, it would be equally as tenable to the entire length of the Chicago River as to this portion of it. The Chicago River has been deepened and improved from time to time to meet the demand of navigation of larger boats than could have navigated any portion of it in its original state. This part of the river still has 13 to 15 feet of water. It is navigable now, navigable in fact, has a greater depth of water now than the minimum depth provided for the Illinois waterway for barge transportation, and in my judgment \$10,000 will dredge out the entire channel and give it the normal depth which it had in 1908.

Within the last six weeks the State of Illinois, because of its interest in preventing the closing of this portion of the river, compelled the removal of a large boat towed in there for abandonment, the owners stating as a matter of defense they supposed the river was going to be abandoned, and therefore no harm would result from another boat being put in there to fill up the channel.

(The subcommittee thereupon took a recess until Saturday, October 7, 1922, at 10 o'clock a. m.)

FEDERAL BUILDING,
Chicago, Ill., October 7, 1922.

The subcommittee met, pursuant to recess, at 10 o'clock a. m.

Mr. GRAHAM. Mr. Sackett, are there any other persons to be heard on behalf of the State?

Mr. SACKETT. I understand there are, and if there is no one else, I suggest we might have a statement from Mr. Barnes, our chief engineer of waterways.

Mr. DENISON. Did you conclude your statement, Mr. Sackett?

Mr. SACKETT. I talked to Mr. Graham about adding some things I overlooked when I get the stenographic report of my statement.

Mr. GRAHAM. Mr. Barnes, we will be glad to hear from you.

**STATEMENT OF MR. M. G. BARNES, CHIEF ENGINEER OF THE
DIVISION OF WATERWAYS, STATE OF ILLINOIS, CHICAGO, ILL.**

Mr. GRAHAM. Mr. Barnes, just proceed in your own way and tell us anything you think will be of benefit to the subcommittee.

Mr. BARNES. Mr. Sackett has quite fully covered the ground from the State's standpoint, except possibly one or two points that he has not cleared up. We went through these same hearings during Governor Lowden's administration when there was an attempt to close up the east fork.

Mr. GRAHAM. The stockyards slip?

Mr. BARNES. In the matter of the stockyards slip, and at that time the waterways division strenuously opposed filling the slip. It is an extremely valuable portion of the only available waterway or terminal property left. It was pointed out by our division at that time that the highway could be placed alongside and accomplish the purpose they are accomplishing by filling it and still keep the waterway open. There is ample room at the south of the stockyards slip for a highway, and the portion they are trying to close now could have been bridged, as has been indicated, and a bridge could be built at a much smaller figure than has been testified to on the stand in this hearing. I do not think it has been pointed out in the hearing that this is an extremely valuable location for a public warehouse. There are only a few points left where a public warehouse could be erected that would have the advantages that this possesses. If this highway is put through as they propose, and possibly it should be, it gives splendid access to the locality on the north. It has Ashland Avenue on the west and also has railroad connections, and there is a demand for such property. A warehouse has recently been erected within almost a stone's throw of this property, and I am informed that it is loaded now to 100 per cent capacity and could take a greater amount of freight if they had the capacity for it, and it has even been contemplated to enlarge it. So that even though we have no waterway to the south and very inadequate ones to the east, it is still loaded to full capacity.

Mr. GRAHAM. Is it on the river?

Mr. BARNES. Yes, sir; it is on this branch of the river.

Mr. GRAHAM. Whereabouts?

Mr. BARNES. It is north of Thirty-ninth Street about one block.

Mr. GRAHAM. On the east side or west side of the river?

Mr. BARNES. On the west side of this branch, and the boats go down as far as Thirty-ninth Street to turn. There is a fork there going in both directions, so that these Lake vessels go down there and turn around when they have unloaded at the warehouse.

Mr. GRAHAM. Do they bring stuff in there by water?

Mr. BARNES. Yes, sir; lake vessels.

Mr. GRAHAM. What sort of materials?

Mr. BARNES. A great deal of it is imported materials from European ports, which come by water to New York, thence by the New York Barge Canal to

Buffalo, and then loaded on vessels that bring it directly to their door; and, as I said, that business is going to increase when our waterway is completed.

Mr. GRAHAM. Can you show us where that warehouse is on this map?

Mr. BARNES. It is approximately in this location [indicating].

Mr. HACK. What warehouse is it?

Mr. BARNES. I do not know the name of the company. Mr. Anderson represents the company.

Mr. GRAHAM. That is about halfway between Thirty-ninth Street and Iron Street.

Mr. BARNES. It is the Merchants Warehouse & Distributing Co. It is a new concern.

Mr. HACK. Thirty-sixth and Iron is way up here, and that is where the Warehouse & Distributing Co. is located. That is three blocks north on the river and not on the branch at all.

Mr. BARNES. None of this is the river [indicating].

Mr. HACK. This is the south branch of the river.

Mr. BARNES. And this is the west fork of the branch and the natural bed of the stream. The east fork is artificial.

Mr. GRAHAM. In view of that discussion, I will ask you if this warehouse is north of the fork?

Mr. BARNES. Yes. As I say, they run down into the fork to turn.

Mr. GRAHAM. Then it is farther north than the point you indicated to me.

Mr. BARNES. I said a block; it is approximately two or three blocks.

Mr. HACK. It is at Thirty-sixth Street and Iron Street.

Mr. GRAHAM. And before the south branch forks?

Mr. BARNES. Yes; I think I indicated that in my first statement.

Mr. GRAHAM. All right; proceed.

Mr. BARNES. We are building a waterway now of 60,000,000 tons capacity and it must be remembered that 50 years ago when the old I. & M. Canal had a capacity and tonnage of 5,000,000 tons annually, this district was extremely congested and students of waterways and waterways traffic realize that there is going to be no place for the transaction of the business that we can bring here with our waterways, and this closing of an extremely valuable property in the central manufacturing district and in the stockyards district is extremely regrettable.

Mr. GRAHAM. You say this leads to the stockyards district. I take it the stockyards property is mostly owned by a corporation, is it not?

Mr. BARNES. The stockyards proper; that is, the yards themselves, are owned of the Union Stockyards Co.

Mr. GRAHAM. Does that abut on this river at any place?

Mr. BARNES. The property directly abutting on it is privately owned or a great portion of it.

Mr. GRAHAM. So that between the property of the Union Stockyards Co. and the river, that is privately owned property.

Mr. BARNES. That is my understanding.

Mr. GRAHAM. Do you know how wide a strip intervenes?

Mr. BARNES. The Union Stockyards and Transit Co.'s property is probably a quarter of a mile from it. The packing-house districts are very close to it. Wilson & Co., for example, are across the street from it and Swift is at the south of it, and between Swift and this property is railroad property which serves Swift and other packers and the Union Stockyards.

Mr. GRAHAM. Did the Union Stockyards or any of the packers there ever use this river to any appreciable extent?

Mr. BARNES. I do not know whether they did or not.

Mr. GRAHAM. Did you ever know of any stock or products being shipped up and down this river?

Mr. BARNES. I do not know of any live stock having been shipped on it because there has been no chance to ship live stock here. The only transportation to the south has been through the I. & M. Canal, and that is not now available and has not been for 20 years, and I doubt if any live stock has ever been shipped, but I do know that meat products have been shipped out and for some time one of the packing companies objected to closing the east branch, the stockyards slip, because he was then shipping his products out and said the slip was very valuable to him.

Mr. GRAHAM. Which one of the packers was that?

Mr. BARNES. The Western Packing Co. They are immediately on the banks of the stream.

Mr. GRAHAM. They seem to have recently changed their view about that, did they not?

Mr. BARNES. Yes. I must qualify that. The entire neighborhood around there have petitioned for the closing, and the manager of the company himself told me he did not feel like standing out alone against the entire community any longer, and would waive his rights although he felt it was a detriment to his company.

Mr. GRAHAM. What view do you take of the legal proposition involved here? I assume you are an engineer and not a lawyer, but doubtless you have given a great deal of attention to these matters. If the Federal Government waives its right to have this portion of the stream considered navigable, can the State prevent its closing?

Mr. BARNES. Well, I should think it was rather doubtful although there are other rights than navigation rights that might give some excuse other than navigation for keeping it open. For example, fire boats could run down in there and protect adjacent property. I do not see how Congress can declare it nonnavigable when it is in fact navigable. The testimony of both those for and against the proposition is that it is in fact navigable.

Mr. GRAHAM. Congress could do that if it wanted to. That has been done on a number of occasions.

Mr. BARNES. Of course, Congress can do anything it wants to but the courts might upset it.

Mr. GRAHAM. I have known in the last few years of several cases where such streams have been declared to be nonnavigable; in fact, it is a rather common practice in streams that are of little consequence in the way of navigation. This is especially true in the Southern States where they want to have drainage projects of various kinds, and in order to build dikes and levees it is necessary to declare certain portions of certain rivers nonnavigable, so they can build across them. The question in my mind, and one which I think is bothering Mr. Denison also, from what he says, is whether, even if the Federal Government waives its rights, the State will have the right to assert its rights to keep this stream open, if the State wants to do so.

Mr. BARNES. That, of course, is a very close legal question. It is a very, very fine legal question, and an engineer should not attempt to answer that.

Mr. GRAHAM. I thought perhaps you were conversant with the situation.

Mr. BARNES. No.

Mr. GRAHAM. Is there anything further you want to add to what you have already said?

Mr. BARNES. I do not think so, but I would be pleased to answer any questions either of you may have to ask.

Mr. DENISON. If I understand your position, it is that if the State of Illinois proceeds to develop what is called its deeper waterway plan and establish water transportation from the Lake to the Gulf, there will be needed terminal facilities, warehouses, storage, etc., and that, in your judgment, the facilities for terminals, etc., will be inadequate if this branch of the river is closed.

Mr. BARNES. They will be woefully inadequate; and that is not only my opinion but the opinion of all waterway advocates that have studied this project. The Federal Government engineers appreciate it and the big business men appreciate it. The railroads now own 75 per cent of the water front from Twenty-second Street to Chicago Avenue.

Mr. DENISON. How much?

Mr. BARNES. They own and occupy 75 per cent, and the highways and other interests own a large percentage of the balance, so that there is no chance to get down into the heart of the city with any water terminals of any consequence. The slips which you see on the north side of the south branch are mostly privately owned; that is, the property abutting is privately owned and privately occupied. There are very few sites anywhere near the so-called loop district that are now available. This site happens to be vacant, with no buildings on it, and it is one of the few remaining. I am confident that within two years of the time our waterways are opened there will be just as strong pressure brought on Congress and others to open and maintain the waterways as there is now to close them. Of course, there is no transportation now, and there can not be, and people who do not look into these matters think it is foolish to keep the deserted waterways open.

Mr. DENISON. When the waterway system that you speak about is opened, if the facilities for terminals and storage, etc., are inadequate, then the State

or some one would have to condemn property in order to secure necessary terminals.

Mr. BARNES. They would have to undo exactly what they are doing now and find some way to condemn property that may be extremely valuable and open slips and terminals for the very purpose we are building the canal. We are studying that very problem now, as to where to find terminals in Chicago for the business of the city, and the nearest available site is some 17 miles away other than that which we now have left.

Mr. DENISON. Then, as I understand it, the basis of your objection to this proposed legislation is that it will deprive the State of possible future terminal facilities which you think will be of extreme value in the future.

Mr. BARNES. And in the very near future.

Mr. DENISON. That is all I have to ask.

Mr. BARNES. I would like to be heard on the other question.

Mr. GRAHAM. With reference to the west branch?

Mr. BARNES. Yes.

Mr. GRAHAM. We will hear you later on that.

STATEMENT OF MAJ. R. W. PUTNAM, DISTRICT ENGINEER, UNITED STATES ENGINEER OFFICE, CHICAGO, ILL.

Mr. GRAHAM. Major Putnam, we will be glad to hear from you what the attitude of your office is about this proposed improvement or the proposed declaration that this portion of the river should be declared nonnavigable.

Major PUTNAM. Before going into details, if you will pardon me, the testimony I give will represent my personal opinion. I do not know what the opinion of the department would be, as I have not consulted them, but I shall give my own personal opinion as a result of an investigation of the river and the conditions surrounding it.

Mr. GRAHAM. Are you the United States district engineer here?

Major PUTNAM. Yes, sir.

Mr. GRAHAM. Then we will be very glad to have your opinion.

Major PUTNAM. This particular portion of the Chicago River was never under improvement by the Federal Government. In about 1896 Congress provided for the improvement of the Chicago River up as far as the Chicago Junction Railway bridge, which is perhaps 1,000 feet lakeward of Thirty-ninth Street, and under appropriations provided by Congress this particular stretch up to this bridge was dredged to a depth of 17 feet in about 1897. That is the only instance of dredging of that particular portion of the river by the Federal Government.

Mr. DENISON. Are you speaking of the South Branch of the Chicago River?

Major PUTNAM. Yes, sir.

Mr. DENISON. And just where is the Chicago Junction Railroad bridge?

Major PUTNAM. I think that is right in here [indicating on Iron Street. We never improved the stretch under consideration by the proposed bill. However, this branch, including the portion under consideration, has been considered by the department and formally by the Secretary of War as a navigable waterway. He made a decision in 1919 to the effect that the entire stretch up to Ashland Avenue was a navigable waterway of the United States.

Mr. DENISON. Who made that decision?

Major PUTNAM. The Secretary of War made that ruling under a recommendation from the then district engineer here.

Mr. DENISON. What was the occasion for his making that decision?

Major PUTNAM. That was prompted by agitation locally toward filling up this particular stretch under consideration right now. In about 1915 the Secretary of War stated he would interpose no objection to the filling of the portion west of Ashland Avenue on the ground that it was not a navigable waterway of the United States.

Mr. GRAHAM. Was the right to fill that granted by act of Congress?

Major PUTNAM. No, sir.

Mr. GRAHAM. Was there ever any declaration that that portion was non-navigable?

Major PUTNAM. No, sir. It was the opinion of the Engineer Department, as approved by the Secretary of War, that the stretch from Ashland Avenue west was entirely artificial. There was an old ditch in there or stream bed, but the artificial section which was built up did not approximate or follow the old stream bed, and on that basis the department stated it had no jurisdiction and

would interpose no objection. Then, subsequent to the filling of that portion, agitation was started to fill this next section, and application, I believe, was made to the local office, and upon reference to Washington and the Secretary of War it was decided that this portion could not be filled without a permissive act of Congress, in view of the fact that it was held to be navigable.

Mr. DENISON. Major, was that in documentary form?

Major PUTNAM. That was in a letter from the Secretary of War addressed, I believe, to the attorney for the sanitary district.

(The letter of the Secretary of War, dated September 18, 1919, follows:)

WAR DEPARTMENT,
Washington, September 18, 1919.

The SANITARY DISTRICT OF CHICAGO,

Chicago, Ill.

GENTLEMEN: Reply to your letter of December 7, 1917, in which you request a ruling from the War Department as to your right to fill in the west arm of the south fork of the South Branch of the Chicago River between certain points stated, conditional upon your obtaining the consent of the municipal authorities of the city of Chicago and the State of Illinois and acquiring title to the lands affected, has been deferred to await the conclusion of the conferences between the district engineer of the Engineer Department at Chicago and your representatives.

I may now confirm the information conveyed to you by the district engineer, that in the opinion of this department the west arm of the south fork of the South Branch of the Chicago River below or east of Ashland Avenue is navigable water of the United States and can not be filled in without the permissive action of Congress.

Very respectfully,

NEWTON D. BAKER, Secretary of War.

Mr. DENISON. Have you a copy of it?

Major PUTNAM. I have a copy of it in the files of my office.

Mr. DENISON. Will you kindly incorporate a copy of that in your remarks?

Major PUTNAM. Yes, sir. The river and harbor act of March 2, 1919, definitely abandoned as a project for improvement all of the South Branch of the Chicago River which included the south fork up to the Chicago Junction Railway bridge, as I have indicated. This was done in view of the activities of the sanitary district with respect to straightening and deepening the Chicago River to provide a channel for their sewage from the lake to their drainage canal and down via Lockport to the Illinois River. They had deepened the river to a depth of 26 feet, and it was to their advantage to keep it at that depth, and so Congress abandoned, as a project, but not as a navigable waterway, that portion of the river, so that at the present time none of the South Branch, including the portion under consideration by this committee, is subject to improvement by the Federal Government.

Mr. DENISON. Unless, of course—

Major PUTNAM (interposing). Unless Congress should appropriate for it. It was the recommendation of the district engineer here, I think about 1918, that Congress no longer appropriate for this branch. As regards the navigation, past and present, on the portion under consideration, the records of our office show that up to about 1900 there was navigation of appreciable volume there. I have an assistant who perhaps can testify accurately on that, and he was here previous to that time; but since then, from our own personal observation and records, the navigation has been negligible. However, there is sufficient width and depth for barges and lighters such as would utilize the drainage canal and the proposed Illinois waterway and the Illinois River. The Federal Government has appropriated in the neighborhood of \$2,000,000 for the improvement of the Illinois River from LaSalle, which is the present head of navigation, to its mouth at the Mississippi River. They have provided for the construction of two locks and dams and for the dredging of the river and for maintenance. The Illinois River in itself, I believe, is not an interstate waterway or is not used for interstate commerce to any appreciable extent.

There is some commerce between Peoria and St. Louis which is interstate commerce, and the Federal Government is interested in it. If the Illinois waterway is completed in the next few years and its expectations are realized, undoubtedly there will be a great volume of interstate commerce, and I believe

the Federal Government would be interested not only in returns on its \$2,000,000 investment in the Illinois River but in its use as a highway for this possible increased traffic. Chicago is to be the lake terminal of this through interstate waterway. It has been the experience of the department that where waterways have not provided returns on investments, the fault has been with the terminals and, in general, not with the waterway. The lack of terminals and terminal facilities has probably contributed a great deal to the failure of waterways to make proper returns on the investments made by Congress. Chicago, as a terminal point for this interstate waterway, is fortunately provided with the Chicago River and its branches, the drainage canal and the Sag Channel, and a great amount of lake front.

Mr. DENISON. What do you mean by the Sag Channel?

Major PUTNAM. The Sag Channel connects the Calumet River, which is approximately 10 miles south, with the main drainage canal. It is a feeder of the canal and is to be used by the sanitary district for the carrying of sewage from the southern portion of the city into the Illinois River.

Mr. DENISON. Was that constructed by the sanitary district?

Major PUTNAM. Yes, sir; it will be adaptable to a certain extent for barge transportation. So that we have a system of interior waterways which are of potential value for barge terminals. It is always difficult to determine what real value they will turn out to be, and I am not prepared to state one way or the other.

Mr. GRAHAM. You represent the Federal Government here and so do we.

Major PUTNAM. Yes, sir.

Mr. GRAHAM. And for one I would like to know what you think about the advisability of shutting off this end of the river.

Major PUTNAM. I think this end of the river should not be shut off until it has been definitely determined by a careful survey by engineers that it is not suitable for a barge terminal or that a barge terminal with equal facilities can be located elsewhere. That is a matter which, if referred to my office for study, could be handled in the course of a few months.

Mr. GRAHAM. When this bill came before the House Committee on Interstate and Foreign Commerce, did the Secretary of War refer this matter to you for advice?

Major PUTNAM. No, sir; this is the first time it has come up.

Mr. DENISON. Major, a map has been filed here by some of the other witnesses showing soundings on this stub end of this fork of the river. Have you, made any soundings in there lately?

Major PUTNAM. Not recently, sir. Not since 1897. It has been that long since we have dredged anywhere near that particular point.

Mr. DENISON. What is the depth of the channel of the proposed Lake-to-the-Gulf waterway, through the Des Plaines River?

Major PUTNAM. The State is proposing 8 feet, except through their locks, where they contemplate 14 feet to provide for expansion without having to rebuild them.

Mr. GRAHAM. A minimum of 8 feet?

Major PUTNAM. A minimum of 8 feet. The present project on the Illinois River, which would, of course, under present conditions, limit the use of the waterway, is 7 feet; that is, we can not spend congressional appropriations for dredging any deeper than 7 feet at the present time.

Mr. GRAHAM. Apparently it is the judgment of those who are back of the movement that a 7-foot channel would be of value as a commercial waterway.

Major PUTNAM. Seven feet would be of value and 8 feet would be of more value. It all depends on the volume of commerce.

Mr. GRAHAM. These soundings which were made by one of the engineers here for one of the parties here in Chicago—you have noticed them yourself?

Major PUTNAM. Yes, sir; I have seen them.

Mr. GRAHAM. They seem to indicate a depth of from 10 to 16 feet.

Major PUTNAM. I think their point was that it was not adaptable for lake navigation without considerable improvement, which is true. Our project for lake navigation provides for 21 feet draft and we carry the dredging to 22 feet to provide 1 foot leeway for the larger freighters. So that for lake navigation this is of no value at present without going to considerable expense.

Mr. GRAHAM. Would it be navigable and useful for the same purposes that the waterway plan of the Illinois River would be useful?

Major PUTNAM. Yes, sir.

Mr. GRAHAM. In other words, it would take care, in its present condition—
Major PUTNAM (interposing). In its present condition, without any improvement whatsoever, it would take care of the vessels that navigate or would navigate the Illinois waterway.

Mr. GRAHAM. If that was completed?

Major PUTNAM. Yes, sir.

Mr. GRAHAM. That is, barges and light-draft boats.

Major PUTNAM. Yes, sir.

Mr. DENISON. The parties who have testified here, it seems to me, have shown conclusively, to my mind at least, that this Thirty-ninth Street ought to be opened up so as to give the people in that part of the city better facilities for transportation. Can that be done by bridging and yet preserve the navigability of the stream without excessive expense?

Major PUTNAM. As far as the barge traffic is concerned, it could, and I would not recommend that any attempt be made to preserve it for anything else except barge traffic. To answer the needs of barge traffic I believe a fixed bridge of 110 feet span and perhaps 16 to 17 feet vertical clearance above the water would answer the purpose. It will be necessary for the large fleets of barges, such as they propose to operate farther down the river, to break up when they come into the drainage canal, so that the full width would not be essential, and a bridge of those dimensions could be built for a small fraction of what the standard Chicago River bridge would cost.

Mr. DENISON. That is an idea that has not been advanced yet by any of the witnesses. Your judgment, then, is that a permanent bridge could be placed here which would open up that part of the city, as it is desired to be opened up, on Thirty-ninth Street, and yet preserve that portion of the river for all purposes that it may be needed for, for barges and for storage, etc.?

Major PUTNAM. Yes, sir.

Mr. GRAHAM. You mean a bridge without a draw?

Major PUTNAM. Yes; a fixed bridge.

Mr. GRAHAM. You would have to have a span, then, with an opening in the center?

Major PUTNAM. Yes; 16½ feet is our adopted clearance; that is, from the lowest member of the bridge to the low-water surface.

Mr. GRAHAM. What would such a bridge cost?

Major PUTNAM. Well, I would imagine not over \$400,000. However, I have not investigated that question. That would just be my guess in comparison with the larger bridges on the Chicago River.

Mr. GRAHAM. Does the Secretary of War ever consent to the building of bridges of that kind?

Major PUTNAM. Fixed bridges have been built in considerable number across the west fork, which you are about to have a hearing on. The matter is covered by section 10 of the rivers and harbors act of 1890, which states that no obstruction to the navigable capacity of a waterway will be permitted without a permissive act of Congress, or words to that effect. To my mind, a fixed bridge at Thirty-ninth Street would not be an obstruction to the navigable capacity of the river as a highway for barges, tugs, and lighters.

Mr. DENISON. Major, of course, you are an official of the Government and you are not expected to make any statement here that would be absolutely binding upon you or upon your future actions; but basing your judgment upon what you now know of this part of the river and what you know of its possible future uses, you think that you would recommend to the Chief of Engineers the approval of a fixed structure across there?

Major PUTNAM. Yes, sir.

Mr. DENISON. And that that could be placed across there and yet preserve that portion of the river for terminals for barges, etc.?

Major PUTNAM. Yes, sir.

Mr. GRAHAM. That would not affect the sanitary situation in any degree?

Major PUTNAM. No, sir.

Mr. GRAHAM. Have you studied the sanitary situation down there?

Major PUTNAM. More or less in connection with this subject of diversion of water which has been under disagreement for some years.

Mr. GRAHAM. That is, the flow from the lake through the drainage canal?

Major PUTNAM. Yes, sir.

Mr. GRAHAM. Major, while it is a matter that we are not immediately concerned with, perhaps; but is there any way you know of or have studied by which a circulation could be had in this end of the Chicago River, so that this

sewage could be swept out and into the canal, and not lie there stagnant and rotting?

Major PUTNAM. I have made no study of that.

Mr. GRAHAM. Do you know of anything that would be effective in such a case?

Major PUTNAM. The sanitary district pump a large amount of fresh water from Lake Michigan at their Thirty-ninth Street pumping station through a 20-foot conduit into this branch of the river. The water is intended to flush out the stream. By discharging this water at Ashland Avenue the stream would be kept clean up that far.

Mr. GRAHAM. Thus creating a current?

Major PUTNAM. Yes, sir; that would be an expensive proposition.

Mr. GRAHAM. I think that is all, Major.

Mr. BLACK. May I ask the major just one question: The only means now, Major, of water getting into this portion of the river is from the north and northeast?

Major PUTNAM. Except what little storm drainage comes in there.

Mr. BLACK. And if you should put a fixed structure across there, that you have spoken of, the supports of that structure would necessarily clog that current somewhat, would they not?

Major PUTNAM. Not necessarily, because they could be placed on the banks and leave a large enough cross section in the stream to handle the flow.

Mr. BLACK. That would choke the stream where it was wider than the span in south of there, would it not?

Major PUTNAM. That would depend upon the span of the bridge.

Mr. BLACK. Yes.

Major PUTNAM. If it were 110 feet, as I suggested, which would take care of the navigation by barges, it would contract the channel.

Mr. BLACK. And if you should put a fixed structure there with supports running down into the water at closer intervals than 110 feet, it would just that much more clog the outlet.

Major PUTNAM. Yes; but that would not be necessary. It would be more expensive to eliminate that feature.

Mr. GRAHAM. That is all, Major. We are much obliged to you.

STATEMENT OF MR. A. T. GROHMANN, CIVIL ENGINEER, UNITED STATES ENGINEER OFFICE, CHICAGO, ILL.

Mr. DENISON. What is your business, Mr. Grohmann?

Mr. GROHMANN. I am an engineer in the United States engineer office and I have been there since 1892. My duties, among others, have been to make surveys of the Chicago River and its branches, taking soundings before and after dredging. The first survey I made of the south fork of the south branch of the Chicago River was in 1896 and 1897 when dredging was being done by the Government. The dredging was carried on to 17 feet depth to a point of about 400 feet west of the Iron Street bridge, Chicago Junction Railway Co., in the west arm of the south fork of the south branch of the Chicago River. At that time, in 1896 and 1897, the south fork was very polluted with matters that came from the stockyards, consisting of organic matter, animal hair, and so forth. They were deposited by the stockyards people, and as the years rolled by it became decayed matter and you could see the stuff shooting up like geysers 6 inches or more with a diameter of 30 feet. A part of this material would be floating on the river and some of it would settle back on the bottom. The action of the wind and sun would dry this material, forming big cakes ranging from 2 feet to 40 feet in diameter and a thickness of from 6 inches to 3 feet. They were so solid and compact that a man could go out and stand on these islands or cakes. They have been tested for strength and my soundings man on many occasions went out and stood on these islands to verify the same. After the sanitary district opened its intake at Thirty-ninth Street the pollution of this river has been greatly reduced. The dredging by the Government, as I stated before, was carried on for 400 feet west of Iron Street Bridge in the west arm of the south fork of the south branch. The reason why the dredging was discontinued was because there was no navigation then going up into the west arm. The only navigation in the last 30 years that has been going on there was in 1900. On the north bank, just east of Ashland Avenue, in the west arm of the south fork of the south branch of the Chicago River, an old

dismantled schooner named *Pestico*, was voluntarily sunk, about 100 feet east of Ashland Avenue, and this boat or schooner was used as a dock or wharf for loading two small scows with hides and grease that was transferred to this wharf by team haul from the stockyards district.

In the latter part of 1900 the *Pestico* was burned down and there has been no navigation since that time in the west arm west of Thirty-ninth Street. There was a witness yesterday testifying that he saw a pile driver in tow of a tug coming down there in 1919. That is true. There was, but that pile driver had in tow a sunken scow which was dropped at the bulkhead of Ashland Avenue; the scow is still remaining in the same place at the present time. Other navigation has not been done on this part of the river. There are a lot of wrecks that have been placed in there from time to time during the past 10 years, and two of them were taken out in 1920. Six months ago another wreck was placed alongside of this burned schooner, which still remains there.

Mr. DENISON. Who put those wrecks in there?

Mr. GROHMANN. The Illinois Stone Co. put in two wrecks and Chris Mamer has one wreck there.

Mr. DENISON. What was the object in putting the wrecks in this part of the river?

Mr. GROHMANN. Because there is no navigation going on in there and they thought it was a good graveyard for old wrecks.

Mr. DENISON. They just used it for a ship's burial ground?

Mr. GROHMANN. Exactly.

Mr. GRAHAM. In the past you have ordered some of them out of there, have you not?

Mr. GROHMANN. Yes, sir; we ordered two of them out belonging to the Illinois Stone Co.

Mr. GRAHAM. Did they take them out?

Mr. GROHMANN. Yes, sir.

Mr. GRAHAM. What is your judgment about the advisability of shutting off this end of the stream, from a Federal standpoint?

Mr. GROHMANN. At present there is no navigation going on in there, and it has not been utilized for the last 20 years. The property on the north side of the river is owned by the Central Manufacturing District and on the south side you will find the stockyards people and two private people. So far none of them has utilized this part of the river for navigation purposes.

Mr. DENISON. I think there is no dispute about the fact that it is not used now to any extent for navigation purposes, but that is not the question that is most vital here. The maps show it has a depth of from 10 to 20 feet of water now.

Mr. GROHMANN. Yes.

Mr. DENISON. And it is claimed by certain representatives of the State that when the deeper waterway system is completed for the Illinois and Des Plaines Rivers they will need terminal facilities for the barges and small craft that bring freight into Chicago. The question we are vitally interested in is whether or not this part of the river has possibilities of future value for transportation purposes, for terminals and storage, warehouses, etc., and we would be glad to have your judgment upon that question.

Mr. GROHMANN. Well, all dockage along the Chicago River is valuable for terminal facilities.

Mr. GRAHAM. If you were advising the War Department about what they ought to do on this particular legislation, what would your advice be?

Mr. GROHMANN. I would advise them to clean it up, for the very simple reason that the water is too polluted for any of these big boats to go in there, because as soon as they go in there it will clog up their boilers.

Mr. DENISON. What big boats do have you in mind?

Mr. GROHMANN. Lake boats or steam-propelled boats or even gasoline boats, because it would ruin their water-cooling systems.

Mr. DENISON. Your view is that the condition of the water is such that it will never be serviceable for transportation purposes or for terminal facilities?

Mr. GROHMANN. In its present condition.

Mr. DENISON. Oh, well, we can not deal with absolutely present conditions. That reduction plant may be cleaned out of there and moved to some other part of the city. We are looking to the future. You are basing your judgment on whether or not this should be closed upon the awful condition of the water there now.

Mr. GROHMANN. Exactly.

Mr. DENISON. Of course, I am inclined to agree with that part of your statement. That is all, Mr. Grohmann.

Mr. GRAHAM. Is there a representative of the city here aside from the Chicago Plan Commission?

Mr. BLACK. Alderman Eaton is here.

Mr. GRAHAM. Mr. Eaton, we would be glad to have a brief statement from you about this matter.

Mr. EATON. About the Thirty-ninth Street proposition?

Mr. GRAHAM. Yes. We would be glad to have a brief statement of the attitude of the city toward it.

STATEMENT OF CHARLES S. EATON, ALDERMAN FROM THE SIXTH WARD AND CHAIRMAN OF THE COMMITTEE ON EFFICIENCY AND ECONOMY OF THE CITY COUNCIL.

Mr. GRAHAM. Mr. Eaton, you are speaking now for the city council?

Mr. EATON. I am speaking for the city council. The attitude of the city of Chicago, on the several occasions that this proposition has come before that body, has been favorable to the development of Thirty-ninth Street—or the Pershing Road development, and we feel that it is a necessary development for that section of the city. The city has a big reduction plant at Thirty-ninth Street and the river, taking care of the garbage of the city of Chicago. We have docks in connection with this which in a measure might in some way be affected by the closing or building of a bulkhead to the north of Thirty-ninth Street; but even in that case we feel that it is a matter of such public moment that this project should be developed and carried on, that we are entirely overlooking the interest the city might have in a turning basin there of any kind.

Mr. GRAHAM. Is there any division of sentiment in the council about that matter?

Mr. EATON. No. It came up before our committee on railroads, industries, and compensation, through Alderman McDonough, who is one of the aldermen from this particular territory, and we discussed it, and we have had the representatives of the plan commission before us and we have had the engineer for our railroad terminal commission before us in discussing the proposition. In all these things, there is just enough argument on the other side not to make it a lead pipe cinch, but this is a Government of majorities, and where the people have had the matter brought to their attention and know the two sides of it and then the vast bulk of the people are on one side—that is the thing that we, as governmental officials, should give heed to. In other words, from the city point of view we must look at it in a larger way rather than at the private interests of one or two particular individuals.

Mr. GRAHAM. Of course, if there is ever to be a terminal established by means of which the facilities of the State waterway system could come to the people of this district, if you close this up, the people who would suffer are your people.

Mr. EATON. Yes; and knowing that we say, "Go ahead." In other words, in all of these projects there is a latent possibility—and that is true of all these slips—that at some time in the hazy future that one thing or another may be done with them, but the potential use of these bits of water is so remote, and we have found that every time we might make utilization of any of these that we always want to build direct and upon correct engineering principles, and hence do not use them. In other words, some of these slips might possibly be utilized, but they will not be utilized, in our judgment, because when they come to use these waterways, if they ever do, they will wish to build slips so that engineeringly they will be correct and economically arranged so that they would be a help to the waterway instead of a poor sort of makeshift and "make-do" arrangement. In other words, if we ever have water development of the Chicago River through the canal, it will have to be on a very scientifically worked out basis with a close eye to the economies, and in order to accomplish those economies you will have to figure the route out very exactly from an engineering point of view, and you will not be interested in these latent possibilities up and down and away from the channel, because you will then have towage charges which will make it impossible to compete with the more mobile forms of transportation that are now coming about.

In other words, the history of transportation has been that the railroad came along with its greater mobility and it has practically eliminated these waterways or the vast majority of them, and I have been pretty much all over this country and I find they are becoming passé, without great public subsidies, and most of them can not operate in competition with the railroads because that saves loadings. A freight car can be shifted around right into a man's place, and it is there. Now, we come to a newer form of transportation which is the truck and trailers, which are of still greater mobility, and all this area for 100 miles is going to be handled by a more mobile form of transportation.

Mr. GRAHAM. I agree with you about that, but I want you to bear in mind, also, that the very existence of a waterway has a tendency to keep down charges for transportation.

Mr. EATON. It makes a competitive point, but your automobile transport is your real competing factor now.

Mr. GRAHAM. The point in my mind is that this is a matter that your people are interested in because if there is anybody that is going to get the short end of it, you are going to get it.

Mr. EATON. Absolutely.

Mr. GRAHAM. If you close up these rivers, the chances are nine out of ten that your freight rates will go up on rail transportation and other forms of transportation.

Mr. EATON. You have heard here in the testimony you have from the representatives of our business interests, our commercial interests, and our engineering interests, and they understand that. In other words, we are not asking you to do this without our eyes being opened. We know what we are doing and we have balanced the relative merits of the potential future use of some of these slips for waterways as against the great sanitary and commercial uses that can be made of these slips in other ways and in the general commercial development and aesthetic development of that portion of the city, and say to you that the scale goes clear down on the side of closing them up. We do not wish to stand in the way of the rest of the State, and we do not believe we are, in any way, standing in the way of the rest of the State. It was suggested here the other day that perhaps this sewage would be thrown a little farther down State. It possibly will, but Chicago is alert to that. We know we have got to take care of that sewage. We are working on that. The sanitary district, as I understand it, is working on that question.

The dilution plan will no longer suffice, and we have got to come to some form of filtration proposition; and if we do not the State legislature will force us to it, so that any question of a little more being thrown in, if the bulkhead in question is moved a little farther to the south or to the north, is of little moment. The rest of the State will not be any more injured in that respect because the whole proposition will be taken care of eventually; and, as I say, our feeling, and the feeling from the official point of view of the city of Chicago, is that we concur in the action of these local people and of our Congressmen and Senators in recommending this to your body, and feel that it is a matter that ought to go through.

Mr. DENISON. Yesterday we drove down by the reduction plant. I think we understand the general plan for opening up Thirty-ninth Street and making it a broad thoroughfare. It is the plan to leave that reduction plant there, right opposite that thoroughfare, and let the people who go up and down that thoroughfare have to smell the odors that come from that plant?

Mr. EATON. The question of the reduction plant is a very vexed one. The city of Chicago got into that reduction plant by pressure. It was originally owned by the Chicago Reduction Co. and conducted in such a way that it was exceedingly offensive, and it was not serving the people as it should; so that the city of Chicago through a bond issue, first, of \$1,000,000 and then of another million dollars, developed that reduction plant. We know that we will have to cut off probably from 30 to 40 feet of the wall of that plant when it comes to actually constructing Pershing Road, and when that issue comes up the question then of maintaining it there or of moving it to another site will have to be decided. Of course, as I have said, we have \$2,000,000 of the people's money in the plant there. It was in a territory that was already filled with odors, and that is how it came to be there. Now, that is about our situation.

Mr. DENISON. I can see that it is quite a serious situation.

Mr. EATON. It is a serious situation. I have just returned from a trip investigating the reduction plants of the Central West and East, and it is a serious problem everywhere. In some of the cities there are nuisances maintained that would not be tolerated here; but, nevertheless, that great problem of disposing of the garbage of a great city like Chicago is a momentous one, and just what will eventually happen, whether we will have to relocate the plant or not, we do not know; but we will have to meet that question when we come to it. In other words, public pressure will probably give the line of progression on that, too.

Mr. DENISON. In asking any of these questions you understand that I am not indicating what view I take of these matters.

Mr. EATON. Absolutely.

Mr. DENISON. What is it that causes the awful condition of the water in what is called Bubbly Creek, between Ashland Avenue and Thirty-ninth Street?

Mr. EATON. Well, I suppose part of it is from the stockyards industries there; that is, it has come through the emptyings from their sewer. We have passed ordinances and one thing and another trying to correct that. I would not be at all surprised if part of it is not due from droppings off of the city of Chicago's scows bringing the garbage up to that plant, and I do not doubt but what part of it is silt that has come down the west fork, and as water naturally does it gradually looks for an angle of rest, and here is a stub end or arm and once it gets into that arm it gets repose and it clogs up there.

Mr. DENISON. As I look at the map and study it, I notice that you have been chopping off of the ends of this branch of the river and you are going to have that stub-end proposition with you until you get it back to the main body of water.

Mr. EATON. I believe that is correct.

Mr. DENISON. So that the problem is no more serious here at this point than it would be a thousand feet farther down the river.

Mr. EATON. I quite agree. I think eventually they will take it bit by bit and they will get clear to the stream. In other words, about all it is now is a slip, and at that a slip that is not used. There was a time in the river development of Chicago when these slips were of immense value, but the tide has changed in the last 10 years, since the last Government surveys and reports on this river. The river commerce has greatly diminished and the problem is solidifying, as you saw it there yesterday when you investigated it. In other words, here is a slip that juts out and that does not really lead anywhere but is a sort of parking place there. These gentlemen who are interested in this matter have suggested it might be a parking way for barges, but you will realize that at this point you are getting away from the main channel and every time you take a barge up into a slip of that kind you have got towage charges which bring it out of line of competition. If you are going to park a line of barges, you are going to want to park them in the stream where you can get them in and out and will not have a towage charge affixed to it every time.

Mr. DENISON. Of course the city has full authority to stop the stockyards from dumping any sewage into this stub, if they want to.

Mr. EATON. Yes; and, of course, we have our inspectors out there looking at it, and, as I recall it, we have entered into a proposition with these stockyard interests—that is, the sanitary board have—for the disposal of what we call trade wastes, under which there is to be a big sewer constructed and a filtration plant installed; and the stockyards interests, I believe, will pay 40 per cent of the expense and the city of Chicago, or the sanitary district, will pay 60 per cent. That under way now to correct that situation, but, of course, these things are all big, momentous things and we can not do them in six months. In other words, eventually that will be eliminated, I think.

Mr. DENISON. That is all, Mr. Eaton; thank you.

Mr. EATON. And, finally, may I make this one further suggestion in conclusion? From the testimony heard in connection with the closing of this particular slip it appears that originally it was not navigable. But that at the time when there was a large amount of commerce on the river in the past, that the public and owners then came forward and made it navigable and kept it thus so long as that was the best use for it. And now that the commerce has gone and been gone for many years and the best use for this slip for the public and owners no longer requires it to lie there in idleness and filth, the public and owners now again come forward and ask the privilege to adapt it to the best present use so as to meet the present situation and the situation as it seems likely to be for a good many years in the future.

And we feel that Congress should have no hesitancy in helping us in so far as they are concerned in this regard, both from the past history of this particular slip and of the city of Chicago itself. For if, as those opposing the abandonment of this slip say, in the future a large commerce may again be developed in the other part of the river and the canal and therefore there might be great necessity for storage space, then it is clear that when such a time comes just as in the past the public and the owners will then dredge out the fill in this slip and take all other necessary steps to meet such an actual demand, just as the testimony shows was done on this particular slip and also all along the river. And we submit that it is much better public policy and principle to permit this slip to be used now for its highest present public use, trusting that as in the past that if a higher public use for the same shall present itself in the future that then the public, the owners, and the city of Chicago will then desire to see such use made of it and will then ask your permission for that purpose as in the past and as at present, than to insist that it remain in its present hapless condition because of some conjectured, theoretic future use of the same.

FURTHER ADDITIONAL STATEMENT OF MISS OLIVE LEITCH.

Miss LEITCH. First, I wish to ask if I may get up a written brief on the law and facts?

Mr. GRAHAM. We will be very glad to have it indeed, and when you revise your remarks you can transmit that with your statement.

Miss LEITCH. I would like to have it made a matter of record that I may introduce a written brief, law, and from the matters of fact. The committee has asked several times in regard to how the west side of Ashland Avenue was filled through Secretary of War Baker. Since 1907 there has been a movement to declare this portion of the Chicago River nonnavigable as far west as Weston Avenue.

They have had committees headed by Miss Mary McDowell (Exhibit B) making requests on the United States Government to declare this portion of the Chicago River nonnavigable, and all of the engineers have said that in their opinion this was a navigable water of the United States and could not be closed, and so in 1915 they presented a bill in the city council asking that the stockyards slip, between Thirty-ninth Street on the east and Racine Avenue on the west, be closed and the ordinance of 1869 vacated, and that was put up to the Government of the United States, through the Secretary of War, and they said that inasmuch as that was a dug channel, they would interpose no objection. When it went back to the city council, the part of the river that was described as the part to be closed was the South Fork of the South Branch of the Chicago River west of Ashland Avenue and as far as Robey Street. (Brief, pp. 8-11.) Then they went to the State Department, and they got a petition to have the State give them their consent, and in their bill they had included the South Fork of the South Branch of the Chicago River from Robey Street to the turning basin at or about the Iron Street Bridge, where the stockyards slip and the South Fork of the South Branch of the Chicago River meet, and they then proceeded to have that bill passed in the city council, and they began filling this river in 1915 and finished in 1918 over the objections of property owners.

Then, after they had done that, they proceeded on the stockyards slip from Thirty-ninth Street on the east to Morgan Street on the west, and I believe this was misrepresentation and a closing up of an important part of the South Branch of the Chicago River without due process of law and under a misrepresentation. I have investigated this matter and looked up the correspondence and can furnish you a brief which, I believe, will show you clearly how the Secretary of War came to give his letter saying that he would interpose no objection over the reports of Colonel Zinn and Colonel Bigsby (Exhibit B), who were then acting engineers of the War Department.

Mr. DEXTER. You mean the Secretary of War was deceived and gave his consent to something which was not contemplated?

Miss LEITCH. I believe I can show that in the briefs which I shall present (brief, pp. 8-23) that he was given the idea that this was the dug channel created under the ordinance of 1869. When it went into the council of the city of Chicago it was then described as the west part of the South Fork of the South Branch of the Chicago River west of Ashland Avenue.

I further want to state that Judge Carpenter decided a case in regard to the barges that were lying in the Chicago River, in this South Fork of the South Branch between Thirty-ninth Street and Ashland Avenue—that they should be removed at once by the Illinois Stone Co., who agreed to do so, and those barges, I understand, were disposed of, and the ones that are now there are new barges, and they are constantly being dumped in there simply to create a nuisance and as a reason for filling it.

You asked the question as to what supplies this waterway with water. (Exhibit, map No. 6.) One day I happened to be riding on a street car and there was a basement dug at about Thirty-ninth Street on Ashland Avenue and the gentleman sitting next to me said, "Look there, young lady, they can not build their foundation because you know this country here is just filled with live springs, and they have the hardest time in the world to sink a basement and keep it dry enough to get their concrete hard enough to set." That is the physical condition there as to the subterranean drainage of the South Fork of the South Branch of the Chicago River. It is fed by a waterway underneath the ground. While there may be a certain percentage of it taken from the sewer and all that sort of thing still there is that condition underlying the ground of the Chicago River at that point. (Exhibit map No. 6.)

I thank you.

(A law brief follows:)

A BRIEF PREPARED BY OLIVE A. LEITCH, AN OBJECTOR, TOGETHER WITH DOLLIE F. LEITCH AND THE HINE BROS., SOAP MANUFACTURERS VESTED HUSBAND PROPERTY OWNERS.

Their properties are located in section 5, township 38 North, Range 14, between Thirty-ninth Street and Ashland Avenue.

Objection is made to the passage of bill H. R. 8648 or bill H. R. 9040 or any other bill pertaining to declaring the South Fork of the South Branch of the Chicago River for a portion of its length as a nonnavigable waterway of the United States and no longer used or needed for commercial purposes.

The law and facts governing the protection, the development, improvement, and maintenance of the Chicago River and its branches, and the law protecting the building and maintaining of the stock yards slip, a canal created by the vacating of Thirty-ninth Street in 1869, located between Halsted Street on the East and Center Avenue on the West in section 32, Township 38, Range 14.

This brief upon the law and facts is prepared pursuant to and in accordance with a hearing held by the Interstate and Foreign Commerce Committee, October 6, 1922, in the Federal building, Room 606, at Chicago, Ill.

The law herein set forth is the law of the State of Illinois, the United States Government, and Municipal laws, which comprise ordinances and statutes of the State of Illinois and the United States Government governing the protection of navigable waters of the United States, whether they be rivers or canals.

THE CONSTITUTION OF ILLINOIS.

ARTICLE 1. The territory now included within the State of Illinois was part of the territory of the United States northwest of the Ohio River, to which the well-known ordinance of 1787 applied. By the ordinance of 1787 for the Government of the northwest territory, it was enacted that:

"The navigable waters leading into the Mississippi and St. Lawrence Rivers and the carrying places between the same, shall be common highways and forever free as well to the inhabitants of the other said territory as to the citizens of the United States that may be admitted into the confederacy, without any tax, impost, or duty therefore."

ORDINANCE OF 1869.

ART. 2. An ordinance concerning the vacation of that part of Thirty-ninth Street, previously known as Egan Avenue, and the construction of a canal commonly known as Bubbly Creek, passed September 10, 1869.

VACATION CONDITIONS.

Be it ordered by the common council of the city of Chicago, That as soon as F Street shall be opened or extended from its present western terminus, in a straight line to intersect with the north line south part of the canal as shown

on the plat hereto attached, and a new street shall have been opened and improved running parallel with the east and west part of the canal as shown on the plat hereto attached, and about 500 feet south thereof, commencing at Halsted Street and running 2,200 feet, more or less, west, as shown on the plat hereto attached, and street so extended and opened shall have been dedicated for public use, and a plat hereto attached shall have been recorded, then that part of Egan Avenue (Thirty-ninth Street) lying west of Halsted Street, together with the south 75 feet of Tucker, Gage, Laurel, and Ulman Streets, where the same intersect with the said Egan Avenue, as shown on the plat to be attached, and the same is hereby ordered vacated: *Provided*, That it shall be the duty of the owners of property fronting on the canal shown on the hereto attached plat to make said canal navigable for vessels of all description entering our harbor, and to maintain it forever as a free canal, and to erect and maintain such swing bridges across said canal as may be necessary for the convenience of the public: *Provided*, That in the event the city extends south of the said Egan Avenue (Thirty-ninth Street), the bridge or bridges shall become a public charge.

NOTE.—The words "forever free" in the above ordinance is in compliance with the ordinance of 1787, which governs and controls the State of Illinois in regard to its navigable waters.

ART. 3. This ordinance of 1869 is an irrevocable ordinance, passed before the State of Illinois constitution of 1870 was ratified by the vote of the people, which was not until July 2, 1870, and went into force August 8, 1870.

ART. 4. And, further, by the constitution of 1870, in Article II, bill of rights, paragraph 14, says: "No ex post facto law or law impairing the obligation of contracts or making any irrevocable grant of special privilege or immunities shall be passed."

The ordinance of 1869 has been made an irrevocable contract between the State of Illinois and the parties therein described. Therefore, any ordinance passed by the city of Chicago attempting to repeal this ordinance, is void and has no force or effect upon the above-mentioned ordinance of 1869.

ART. 5. An ordinance passed by the city council of Chicago, found on page 742 of the council proceedings for 1921-22. This ordinance, above mentioned, attempted to repeal the ordinance of 1869, which created the stock yards slip as a public highway by water, and to remain forever as a free canal to all boats entering our harbor has no force or effect upon the said ordinance of 1869, and is unconstitutional.

NOTE.—The ordinance of 1869 is known as Document No. 2435, Records City of Chicago, passed September 10, 1869, and approved by Mayor J. B. Rice, September 11, 1869.

THE RIVERS AND LAKES COMMISSION OF ILLINOIS.

ART. 6. Was an act creating a rivers and lakes commission for the State of Illinois and defining the duties and powers thereof, as amended by Senate bill No. 404, approved June 30, 1913.

SEC. 7. It shall be the duty of said commission to have a general supervision of every body of water within the State of Illinois wherein the State or the people of the State have any rights or interests, whether the same be lakes or rivers, and at all times to exercise a vigilant care to see that none of said bodies of water are encroached upon, or wrongfully seized or used by any private interest in any way, except as may be provided by law and then only after permission shall be given by said commission, and from time to time for that purpose, to make accurate surveys of the shores of said lakes and rivers, and to jealously guard the same in order that the true and natural conditions thereof may not be wrongfully and improperly changed to the detriment and injury of the State of Illinois.

The Rivers and Lakes Commission of Illinois shall have power and authority to inquire into the encroachment upon, wrongful invasion and private use of every stream, river, lake or other body of water in which the State of Illinois has any right or interests. The commission shall have power to make and enforce such orders as will secure every stream, river, lake, or body of water, in which the State of Illinois has any right or interest against encroachment, wrongful seizure or private use.

SEC. 14. It shall be the duty of said rivers and lakes commission to see that all the streams and lakes of the State of Illinois, wherein the State of Illinois or any of its citizens has any rights or interests, are not polluted or defiled

by the deposit or addition of any injurious substances, and that the same are not affected injuriously by the discharging therein of any foul or injurious substances so that fish or other aquatic life is destroyed. And if upon investigation the commission shall find that any of such streams and lakes are so polluted and defiled, or affected injuriously by the discharging therein of any foul or injurious substances so that fish or other aquatic life is destroyed, it shall be the duty of said commission to enter an order commanding the abatement of such nuisances within such time as may be fixed by the commission.

SEC. 18. Wherever the terms public waters, public bodies of waters, or public streams are used or referred to in this section they shall be construed to mean all open public streams and lakes capable of being navigated by water craft for commercial uses and purposes, together with all bays, sloughs, backwaters, and submerged lands that are open to the main channel or body of water and directly accessible in their natural state by such water craft.

SEC. 26. Said rivers and lakes commission shall, for the purpose of protecting the rights and interests of the State of Illinois, or the citizens of the State of Illinois, have full and complete jurisdiction of every public body of water in the State of Illinois, subject only to the paramount authority of the Government of the United States with reference to the navigation of such stream or streams and the laws of Illinois, but nothing in this act contained shall be construed or held to be any impairment whatsoever of the rights of the citizens of the State of Illinois to fully and in a proper manner enjoy the use of any and all of public waters of the public waters of the State of Illinois.

WHAT CONSTITUTES NAVIGABLE WATERS OF THE UNITED STATES (20 WALL. 430).

ART. 7. The navigability of a stream for the purpose of bringing it within the terms "navigable waters of the United States" does not depend upon the mode by which commerce is conducted upon it, whether by steamer, sailing vessel, or Durham boats, or upon the difficulty attending navigation, such as those made by falls, rapids, or sand bars. Even though these be so great that while they last they prevent the use of the best means for carrying on commerce.

It depends upon the fact whether the river is in its natural state as such as that it affords a channel for useful commerce.

This doctrine applied to the Fox River in Wisconsin, a river whose navigability was originally so much embarrassed by rocks, rapids, so that only Durham boats could use the stream, but which afterwards by canals, locks, and other artificial means was so much improved as that steamboats could use it freely.

Those rivers must be regarded as public highways by water in law which are navigable in fact, and they are navigable in fact when they are used or susceptible of being used in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary mode of trade and travel by water constitutes navigable waters of the United States within the meaning of the acts of Congress. When they form by themselves or by uniting with other waters a continued highway by water over which commerce is or may be carried on with other States or foreign countries in the customary mode in which commerce is conducted.

Power over navigable waters is given to Congress by the grant of 1787, the same as it has given the power to the State of Illinois.

By the ordinances of 1787 for the government of the Northwest Territories it was enacted that "the navigable waters leading into the Mississippi and St. Lawrence Rivers and the carrying places between the same shall be common highways and forever free as well to the inhabitants of the other said territory as to the citizens of the United States that may be admitted into the confederacy without any tax, impost, or duty therefor."

This power by the grant of 1787 gives to Congress over navigable waters connected with other foreign and coasting trade and for the purpose of revenue, but does not by these grants prevent the State from continuing its former legislation over them, and especially as to the reserved objects, until it conflicts with some laws passed by Congress or some treaties made or some expressed provision of the Constitution. (Gibson v. Ogden, 9 Wall. 194, 14 Peters 594.)

CONSTITUTIONAL PROVISION OF THE UNITED STATES PROHIBITING ANY EX-POST FACTO LAWS BEING PASSED BY CONGRESS TO IN ANY WAY EFFECT OR ABRIDGE THE ORDINANCE OF 1787 (HEREIN CITED) UPON WHICH THE FOUNDATION OF THE CONSTITUTION OF THE STATE OF ILLINOIS AND THE UNITED STATES GOVERNMENT IS BASED.

ART. 1. The Constitution of the United States in section 9, paragraph 3, recites: "That no bill of attainder or ex-post facto law shall be passed." Therefore, any act passed by Congress to declare nonnavigable the south fork of the South Branch of the Chicago River, lying west of Thirty-ninth Street and extending to Western Avenue on the west, would be unconstitutional.

THE POWER OF THE UNITED STATES GOVERNMENT TO EXERCISE THE RIGHT OF EMINENT DOMAIN.

ART. 8. The right of eminent domain may be exercised by the United States within the several States, so far as is necessary to the enjoyment of the powers conferred upon the United States by the Constitution for the erection of forts, magazines, arsenals, dockyards, and for the improvement of the navigable waters of the United States for commercial purposes.

Illustration: Thus the land of riparian owners on navigable streams may be taken for the erection of bridges across such streams. (*Hudson v. Cuero Land Co.*, 47 Tex. 56, 26 Am. R. 289.) (2) For the construction of a towpath in connection with a public canal. (*Carpenter v. State*, 12 Ohio St. 457.) (3) For the purpose of altering the stream in order to facilitate navigation. (*Avery v. Fox*, 2 F. Cas. No. 674. 1 Abb. 246; *Homochitto River v. Withers*, 29 Miss. 21, 64 Am. D. 126.)

Riparian rights are property rights, and therefore property in the legal significance of the term and within the meaning of the Constitution. (*Mansfield v. Balliett*, 65 Ohio St. 451, 63 NE. 86, 58 I. R. A. 628.)

But a general power to condemn private property does not authorize an interference with the navigability of a stream or other body of water.

The power to condemn riparian rights does not authorize the destruction of navigable waters. (*Shepard Drain Dist. v. Elmerman*, 140 Wis. 327, 122 NW. 773.)

Further, the right of eminent domain of the State of Illinois and United States Government does not authorize a highway. Example: Pershing Road to be extended from the lake through section 32, township 39, range 14, and section 388, township 14, range 14; to be laid out over a navigable river so that the river is obstructed by a bridge (of a fixed type of bridge, which does not permit of the full use of a navigable waterway). (*Com. v. Roxbury*, 9 Gray (Mass.) 451; *Com. v. Coombs*, 2 Mass. 489.)

THE UNITED STATES STATUTE PASSED BY THE FIFTY-FIRST CONGRESS, SESSION 1, 1900, CHAPTER 907, AUTHORIZING AND LIMITING THE OBSTRUCTION OF THE NAVIGABLE WATERS OF THE UNITED STATES.

SEC. 10. No unlawful obstructions to be created or continued.—That the creation of any obstructions not affirmatively authorized by law to the navigable capacity of any waters, in respect of which the United States has jurisdiction, is hereby prohibited, the continuance of any such obstructions, except bridges, piers, docks, wharves and similar structure created for business purposes, whether heretofore created, shall constitute an offense, and each week's continuance of any such obstruction shall be deemed a separate offense.

Every person and every corporation which shall be guilty of creating or continuing any such unlawful obstruction in this act mentioned.

The creating or continuing of any unlawful obstruction may be caused to be removed by the injunction of any circuit court exercising jurisdiction in any district on which such obstruction may be threatened or may exist, and proper proceedings in equity to this and may be instituted under direction of the Attorney General of the United States.

The above statutes are all in compliance with the Constitution of the United States and the ordinance of 1787, and constitute the law of the State of Illinois and United States Government in protecting navigable rivers and artificial channels such as the stock yards slip, a canal created in 1869.

Artificial water courses are within the protection of the Constitution of the United States and the State of Illinois, as well as the natural watercourses.

The following facts and evidence are herein set forth to show that the city of Chicago and the sanitary district, municipal corporations (through the City Council of Chicago), and officers of the State of Illinois did collude and conspire with the private corporations, the Union Stock Yards & Transit Co. and the First Trust & Savings Bank by fraud and misrepresentation did unlawfully and illegally close the South Branch of the South Fork of the Chicago River, a natural, navigable river of the United States, west of Ashland Avenue, and extending to Robey Street on the west, in section 6, township 38, range 14, and how the Secretary of War and the chief engineers of the United States Government have cooperated with these public and private corporations to jointly, illegally, and unlawfully, by fraudulent misrepresentation, cause the above described part of the Chicago River to be filled and the right of navigation thereon to be destroyed, by being solidly filled in and a bulkhead placed on the east line of the said Ashland Avenue.

EVIDENCE.

[Council proceedings, 1913 and 1914, vol. 11, pp. 2397-4868.]

Page 2980, second ward: Aldermen Harding and Norris, commissioners of public works, be and they are hereby, directed to apply to the Secretary of War, in writing, for information as to whether the United States Government has any right in or authority over that part of a certain slip or canal commonly known as Bubbly Creek, which lies between Halsted Street on the east and Center Avenue on the west (said slip or canal being an open sewer ditch, very shallow and unfit for navigation) in order that the city of Chicago may proceed to close as a menace to the public order; that the answer received in response to said inquiry be submitted to this council as soon as possible. (December 11, 1913. Vol. 11, p. 3681.)

DEPARTMENT OF PUBLIC WORKS,
COMMISSIONERS OFFICE,
Chicago, January 23, 1914.

The honorable the MAYOR and CITY COUNCIL:

GENTLEMEN: Your order of December 11, 1913, requesting an opinion from the Secretary of War as to jurisdiction over Bubbly Creek (Thirty-ninth Street Canal) was transmitted to the Secretary of War, and I inclose herewith his reply to the inquiry.

Yours very truly,

L. E. McCANN,
Commissioner of Public Works.

The following is the communication transmitted with the foregoing communication:

WAR DEPARTMENT,
Washington, D. C., January 20, 1914.

Hon. L. W. McCANN,
Commissioner of Public Works, Chicago, Ill.

SIR: I beg to acknowledge the receipt of your letter of the 20th ultimo in which you quote a resolution to the City Council of Chicago asking if the United States claims any right or authority over that part of a certain slip or canal commonly known as Bubbly Creek, lying between Halsted Street on the east and Center Avenue on the west, within the limits of said city.

In reply I have the honor to advise you that the records of the department show that this slip or canal was dug by parties in pursuance of authority given by the city of Chicago and is not considered a navigable water of the United States.

This department has no objection, therefore, to the city's project for closing the said slip.

Very truly yours,

HENRY BRECKINRIDGE,
Assistant Secretary of War.

(Referred to the committee on health.)

In pursuance to the above letter of transmittal from Secretary of War, the said city council did, on or about the 15th day of July, 1915, which was six months after this letter was written, pass an ordinance in the city council, as follows:

An ordinance passed June 14, 1915, provided that all that part of the west arm of the South Fork of the South Branch of the Chicago River lying west of the east line of Ashland Avenue, as now laid out and established, comprising the strip shown in colors red and green, indicated by the words "To be vacated," on a plat hereto attached, marked "Exhibit A," which plat for greater certainty is made a part of this ordinance, be and is hereby vacated and closed, inasmuch as the same is no longer required for public use, and the public interest will be subserved by such vacation; and the city of Chicago hereby releases and relinquishes to the owners of the real estate abutting on that part of the West Fork of the South Branch of the Chicago River vacated by this ordinance and all rights of the city of Chicago and the public therein.

Sec. 2. That the vacation herein provided is made upon express agreement that the First Trust & Savings Bank, as trustees, under the provisions of a trust agreement dated under the 1st day of April, A. D. 1909, and known as trust No. 506, and the Union Stock Yards & Transit Co., of Chicago, owners of the said abutting real estate, will within three years fill in or cause to be filled in that part of the West Fork of the South Branch of the Chicago River shown in red and green, "Exhibit A."

Sec. 6. That the Sanitary District of Chicago is hereby given and granted the right, privilege, and authority to construct, reconstruct, use, maintain, and operate an overflow sewer, drain, or outlet under and through Ashland Avenue to connect the present Ashland Avenue sewer with that of the West Fork of the South Fork of the South Branch of the Chicago River, lying east of Ashland Avenue, and the commissioner of public works is hereby authorized and directed to issue to Sanitary District of Chicago a permit, without cost, for doing the work and without requiring a deposit of any money now required under the ordinances of the city of Chicago.

Sec. 7. The sanitary district is hereby given and granted the right, privilege, and authority to construct, reconstruct, operate, use, maintain, and operate such structures, work, or appurtenances necessary and proper for the removal of refuse and solids, arising from trade waste of various industries, or the substance or solids, mingled, or substance mixed with trade waste, refuse, solids, in, under, and through a portion of that part of the south one-half of section 32, township 39, range 14, lying south and east of the main channel of said South Fork, and to construct intercepting sewers, drains, and outlets connected therewith. (Council proceedings, 1915-16, p. 650-654.)

The law of the State of Illinois, United States Government, does not permit a municipal corporation to condemn a right of way for sewers through a public stream to make it a part of the sewer system. (Healy v. Delta, 59 Colo. 124, 147, p. 682.)

The sanitary district and the city of Chicago, since 1907, have been trying to close the South Fork of the South Branch of the Chicago River from Western Avenue to Thirty-ninth street since 1907, and have used every means by which to get the Secretaries of War to agree to let them do so.

The following letters, dated January 18, 1907, July 14, 1913, and October 12, 1912:

(Explanation: Miss Mary McDowell, 4630 Gross Avenue, Chicago, Ill., was a representative of the stockyards interest, who purported to be working in the interest of public health.)

JANUARY 18, 1907.

MISS MARY McDOWELL,
4630 Gross Avenue, Chicago, Ill.

MADAM: Yours of January 15, 1907, is duly at hand. As to a possible filling up of the west arm south fork, South Branch of the Chicago River, for a portion of its length between Iron Street and Western Avenue, I find from records of this office and by inquiry elsewhere that this west arm up to a point about 600 feet west of Iron Street is quite deep, having been dredged once by the United States. Beyond the end of the dredging the depth is much less, the width about 200 feet up to Thirty-ninth Street; from Thirty-ninth to Fortieth Street the depth is about 6 to 7 feet, sufficient for naphtha launches and lift-draft flatboats and scows.

The city has already established dock lines or harbor lines 150 feet wide from Thirty-ninth Street to Ashland Avenue and 175 feet (about) from Ashland Avenue to Sexton's brickyards, near Leavitt Street.

Some wharves, piers, or docks, now in a decayed condition, have been built west of Ashland Avenue. Some property owners along the banks between the forks and Ashland Avenue have during the past year come to this office with

requests that the United States extend the dredging farther up the arm to Ashland Avenue and Leavitt Street, while some others have protested against its being filled up, and city ordinances have been already passed prohibiting the filling up of any water area forming a part of the Chicago River or any of its branches within the city limits.

However, considering that up to the present Congress has not authorized any dredging in this ford above the stockyards, I imagine that the War Department would waive its objection to a partial filling of the western portion of the west arm, provided that such filling was described in definite plans, was requested or assented to by all the interested riparian owners, and was authorized by the city. A request of such nature could be forwarded by this office to the Secretary of War for his action.

Respectfully,

Colonel BIXBY.

JULY 14, 1913.

HON. JAMES H. LAWLEY,
Alderman, 1925 West Chicago Avenue, City.

DEAR SIR: The section of waterway referred to in your letter of July 11, 1913, are, in my opinion, navigable waters and can not be filled up except by an act of Congress.

I would recommend that you address your Representative in Congress and ask that a bill be passed declaring that section of waterway named are no longer required for the purpose of navigation and that the same be abandoned as navigable waters of the United States.

Very respectfully,

GEO. A. ZINN,
Lieutenant Colonel, Corps of Engineers.

OCTOBER 12, 1912.

MR. FRANCIS P. CONNERY,
City Clerk, Chicago, Ill.

DEAR SIR: Receipt is acknowledged of your letter of the 4th instant in regard to the west arm of the south fork of the South Branch of the Chicago River. This part of the Chicago River is known by the United States as the west arm of the south fork of the South Branch of the Chicago River, and is so referred to in all appropriation acts and other published information concerning navigation of the Chicago River. As to solidly filling the portion of this fork west of Ashland Avenue, it may be assumed that inasmuch as Congress has not authorized any dredging in this fork above the stockyards the War Department would waive its objections to a partial filling of the western portion of the west arm, provided that such filling was described in definite plans and was requested or was assented to by all interested riparian owners and was authorized by the city council, a request of such nature could be forwarded by this office to the Secretary of War for his action. If you so desire, a representative from this office can appear before the committee to furnish any additional information.

By direction and in the absence of Lieut. Col. George A. Zinn.

Very respectfully,

P. F. PEGUIS, Chief Clerk.

In 1911 the river was dredged to a depth of 13½ feet under the soundings, Map 8, and report of Col. George A. Zinn, by the sanitary district for a bottom width of 75 feet from Ashland Avenue to its upper end, a distance of about 3,300 feet. It has, however, been considerably filled up by refuse from the stockyards.

DISTRICT ENGINEER'S OFFICE,
May 16, 1918.

MR. D. F. LEITCH,
General Delivery, Chicago, Ill.

DEAR SIR: Your letter May 4, 1918, addressed Custodian of Surveys, Washington, D. C., has been referred to this office for reply.

Your request is somewhat vague and indefinite. It is suggested that you call at this office with a view to expediting in compliance with your request.

By direction and in the absence of Colonel Riché.

Very respectfully,

S. P. P., Chief Clerk.

MAY 20, 1919.

BLUNT: This is one of the Bubbly Creek people—Miss not Mr. Pegues is trying to “break into the game.” Watch him.

C. S. R.

MAY 25, 1918.

Now seen for the first time.

BLUNT.

Kindly note letter of May 16, 1918, from the chief clerk, S. P. Pegues in answer to my letter of inquiry dated May 4, 1918. Investigation shows that this letter never left the engineer's office, but I came into possession of a copy of same, with footnote written in pencil by the United States engineer at our Chicago office, Col. Charles S. Riché.

The notation was to Colonel Riché's first assistant, Mr. Blunt, signed “C. S. R.” (Charles S. Riché, chief engineer for the United States at Chicago), and read in part: “Pegues is trying to ‘break into the game.’ Watch him.”

In further explanation to the above will say we protested against the destruction of a very important part of the Chicago River. Mr. Pegues evidently was not acquainted with the chief engineer's and his assistant's collusion, and wrote the writer a letter, which, by the way, I never received. Later I found this letter in the Government files, with the notation in pencil as above stated. This notation alone shows very clearly that the chief executives are guilty of a breach of public trust, and in spite of the fact that the above officials are sworn to preserve and protect the Nation's waterways.

Instead of cooperating with us as protestants to preserve this waterway, they were parties to a “game” (with the Chicago packers, Union Stockyards, and their railroad interests, and the Sanitary Districts of Chicago) to destroy a part of the Chicago River and its commercial value.

MISS DOLLY F. LEITCH.

The foregoing letter, written by Colonel Riché, the engineer in charge at the Chicago office of the Engineering Department, United States, is another incident clearly showing that the sanitary district, the city of Chicago, the officers of the State of Illinois, and the United States Government, together with the Union Stock Yards Co. et al., were in a game, and by fraud and misrepresentation did illegally and unlawfully close the south fork of the South Branch of the Chicago River, west of Ashland Avenue, having no State constitutional power nor Government power so to do, as is herein set forth.

The following is the ordinance of the city of Chicago that followed the above closing of the south fork of the South Branch of the Chicago River west of Ashland Avenue, and was instituted for the purpose of filling the south fork of the South Branch of the Chicago River east of Ashland Avenue to Thirty-ninth Street:

Whereas the filling up of that part of Bubbly Creek (the South Branch of the Chicago River) west of the Ashland Avenue Bridge caused the abatement of the nuisance in that immediate locality: Therefore be it

Ordered, That the committee on public health be, and it is hereby, directed to cause the institution of the proper steps to abate the nuisance in the channel between Thirty-eighth and Fortieth Streets from South Halsted Street to South Ashland Avenue.

Presented by Alderman Cullerton.

Referred to Committee on Health, May 16, 1918: Nance, Cullerton, Pretzel. The following letters show the reason for method taken to close west of Ashland Avenue and to continue to destroy international commerce upon the Chicago River within the stock-yards district, and together with an affidavit by an employee of the Chicago Junction Railway Co., formerly an employee of the Union Stock Yards & Transit Co., one Michael Murphy, who gave testimony at the hearing for the filling of west of Ashland Avenue.

CHICAGO JUNCTION RAILWAY CO.,
Chicago, January 20, 1900.

MARY A. LEITCH, *LaGrange, Ill.*

DEAR MADAM: I find that some parties are utilizing property belonging to you on the north bank of the west fork of the stockyards branch of the Chicago River for dock purposes in handling freight to and from the various

industrial plants located in the stockyards territory, which is transported by boats down the Chicago River to the docks in the vicinity of Rush Street Bridge. This business was formerly handled by rail out of the stockyards and netted us some revenue.

In view of the fact that your relations with this company have heretofore been most cordial, and that we have paid you considerable sums of money, I beg to solicit your cooperation toward putting an end to this practice, which certainly is but a nominal benefit to you and means much to us.

Kindly advise if you are familiar with this matter and if you will assist us as requested.

Yours truly,

R. FITZGERALD,
General Superintendent.

CHICAGO JUNCTION RAILWAY CO.,
Chicago, February 22, 1900.

MRS. MARY A. LEITCH, *LaGrange, Ill.*

DEAR MADAM: Referring to recent correspondence in reference to certain parties utilizing your property for loading freight onto boats in the stockyards slip, beg to advise that from all I have been able to learn, this amounts to considerable business during the navigation season, when there is one boat, and sometimes two, that make daily trips. One of these boats, the *Wallace*, is a scow-built steamer, and another is a tug named *Henry Hill*, which carries two barges. This is depriving us of a good deal of revenue, and in view of the relations existing between yourself and this company I feel that you should assist us in breaking up this practice.

The McCurrie Transfer Co., teamsters, doing a business almost exclusively in the stockyards district, have been hauling this stuff to the point where it is loaded onto the boats. They drive across Ashland Avenue Bridge, thence through the brick yards onto the ground which borders the river at that place. This business, it seems, has been conducted at various times and been loaded at various places, but has been driven from one point to another.

If you are willing to assist us in breaking up this practice, I suggest that when the navigation season opens we have a man on watch there to catch them in the act, so as to have something positive to work on.

Please advise what you are willing to do in the matter.

Yours truly,

R. FITZGERALD,
General Superintendent.

CHICAGO JUNCTION RAILWAY CO.,
80 EXCHANGE BUILDING, UNION STOCKYARDS,
Chicago, June 4, 1900.

MISS MARY T. LEITCH,
LaGrange, Ill.

DEAR MOLLIE: I wish to call your attention to the fact that the team business to the dock property in this vicinity of Fortieth Street and Ashland Avenue has been again renewed. I find the wagons of the Joseph Stockton Co. hauling this freight to the dock on the north bank of the river, just east of Ashland Avenue Bridge.

I wish you would treat this information confidential and take such steps as you see fit to break up this practice. Kindly advise me of your action, and oblige.

Yours truly,

R. FITZGERALD,
General Superintendent.

At the time the above three letters were written there were from 4,000 to 5,000 tierces of mess pork and lard loaded at these docks and taken, as is stated in above letters, to the Rush Street dock, to be reloaded upon the lake vessels.

Extracts taken from an affidavit of one Michael Murphy, an employee of the Chicago Junction Railway Co., and formerly an employee of the Union Stockyards & Transit Co.:

“The affiant deposes and says that as far back as 1897 that west of Ashland Avenue was never navigable, and affiant is satisfied it was never used except

occasionally for small boats (Durnham boats), and was only 3 or 4 feet deep and 10 feet wide."

The facts: In 1869, when the Beers estate, in section 6, township 38, range 14, through which the South Branch of the Chicago River runs, was partitioned by the circuit court, the plat showing the partition of the land, copy of which is hereto attached (recorded in book 5, page 2, circuit court), shows that the south fork of the South Branch of the Chicago River, immediately west of Ashland Avenue, was 173 feet wide, with a gradual variance through the partition.

Extract 2 of Michael Murphy's affidavit:

"Affiant deposes and says in paragraph 3 that between 1880 and 1900 the owners of land adjacent to the creek and lying west of Ashland Avenue, for the purpose of dock frontage at their own expense, excavated a channel."

The facts, order of approval:

Ordered, That the report of the commissioners appointed to make an estimate of the cost of the improvement contemplated by the ordinance entitled "An ordinance for the improvement of South Branch of Chicago River from Egan Avenue to west line of east 30 acres of north 120 acres of NW. 1/4 sec. 6, 38, 14," passed the 2d day of June, A. D. 1890, be, and the same is hereby, approved, and that the corporation counsel be, and he is hereby, directed to file a petition in the county court of Cook County, Ill., for proceedings to assess the estimated cost of such improvement, in accordance with the act in said ordinance mentioned.

REPORT OF COMMISSIONERS AND ORDER OF APPROVAL.

To the mayor and aldermen of the city of Chicago in city council assembled:

The city council of said city, having passed an ordinance proving that the South Branch of the Chicago River from Egan Avenue to the west line of east 30 acres of north 120 acres of NW. 1/4 sec. 6, T. 38 N., R. 14 E., be dredged to a depth of 14 feet below city datum and docked to the height of 5 feet above city datum, said work to be done under the superintendence of the department of public works of said city, and the undersigned having been appointed by said city council, commissioners to make an estimate of the cost of said improvement, including labor, materials, and all other expenses attending the same, and the cost of making and levying the assessment therefor, do herewith submit our estimate of such total cost.

Dredging, 158,016 cubic yards, at 36 cents.....	\$56,885.76
Docking and filling.....	52,738.76
Inspection and superintending.....	3,288.73
Cost of making and levying an assessment therefor.....	3,387.40
Total.....	116,300.65

H. J. JONES,
GUY MAGEE,
W. R. NORTHWAY,
Commissioners.

Dock No. 1001.

Dated this 9th day of June, 1890.

(Plat and contour map attached showing physical conditions and the depths of the water in river west of Ashland Avenue in 1889, just 10 years prior to the affidavit of the said Michael Murphy, the employee of the Chicago Junction Co. and the Union Stockyards & Transit Co.)

Facts: The War Department report of 1866 to 1912, on page 1859, says:

"The Chicago River and its branches are the most active and important nontidal stream of its length in the United States. * * * It is an important river in controlling rates."

Petition to the Congress of the United States for improvements of the Chicago River, January 13, 1912 (F. 35, P. D. G. 4, 1902, states):

"The Chicago River is one of the most important commercial navigable and nontidal waters of its length in the world." (Gen. John M. Wilson, report for 1893, Chief of Engineers, and Maj. G. J. Lydecker.)

Extract from report of Colonel Zinn, Corps of Engineers, dated September 15, 1913, page 65, article 148:

"If the improvement of the Chicago River was a local question, the United States Government would be at fault for appropriating funds for that purpose.

On the contrary, however, the Chicago River is a navigable water of the United States, and the question is not only a local one but an international one."

Facts: Thirty-ninth Street Bridge (Pershing Road) and the Ashland Avenue Bridge over the South Fork of the South Branch of the Chicago River, in 1903 swung six times a month, as per report of Public Works and Buildings, page 144.

Thirty-ninth Street Bridge (Pershing Road), 1904, twenty-ninth annual report, department of public works, page 217, shows Thirty-ninth Street Bridge swung eight times per month.

These facts are in answer to and in rebuttal of Michael J. Murphy's affidavit as above set forth, and showing how the officials (public) have withheld these facts in order to allow the river to be closed.

The following instrument shows the State officials' part in aid of the destruction of the South Fork of the South Branch of the Chicago River, west of Ashland Avenue, by fraud and misrepresentation, and wholly without constitutional power or legislative enactments so to do:

COPY OF CERTIFIED COPY OF AN APPLICATION TO CLOSE AND VACATE FORK OF CHICAGO RIVER BY SANITARY DISTRICT OF CHICAGO.

UNITED STATES OF AMERICA,
State of Illinois.

Before the Rivers and Lakes Commission of Illinois—Application of the Sanitary District of Chicago for permit to vacate and close up the extreme west fork of the south fork of the South Branch of the Chicago River.

Whereas the Sanitary District of Chicago, a municipal corporation, has filed with this commission on the 28th day of August, A. D. 1915, a petition, a certified copy of a certain ordinance passed by the city council of the city of Chicago, and a certain written proposed agreement, representing to this commission that said agreement relates to a proposed plan of improvement to be provided for by the said Sanitary District of Chicago and certain subscribers thereto, which provides, among other conditions, for the abandoning and abatement of a certain nuisance created by the discharging on the part of the said sanitary district and the subscribers to said agreement into what is known as the east and west arms of the South Fork of the South Branch of the Chicago River, which includes that part of said river lying west of the east line of Ashland Avenue, in the city of Chicago. It is provided in said agreement among other things "that means or methods be provided and installed for the elimination from said sewage referred to in said agreement of all solids and trade waste, with the end in view of rendering the effluent from the plants of the said subscribers stable and nonputrescible before the same shall enter into the channel controlled by the district."

Whereas it is represented by the Sanitary District of Chicago, appearing before this commission on the 8th day of September, A. D. 1915, by its assistant attorney, Charles E. Anthony, Esq., that said sewage and other foul and injurious substances now being discharged into the said west fork of the South Fork of the South Branch of the Chicago River are a menace to the public health and public welfare, and that the said Sanitary District of Chicago seeks permission, as does the Union Stockyards & Transit Co., of Chicago, a corporation, and the First Trust & Savings Bank of Chicago, as trustee for certain owners of all the land abutting on that portion of said river, to have that portion of said river so vacated and to permit the construction of a bulkhead and filling in of that part of said river, as set forth in said petition filed herein:

Therefore, the Rivers and Lakes Commission of the State of Illinois finds and certifies that it has jurisdiction of the subject matter herein set forth in said petition of the said Sanitary District of Chicago, and it appears to this commission that the public health and public welfare of the citizens of the city of Chicago will be benefited by the completion of the proposed work referred to in the petition, plans, and proposed agreement filed with the commission by the said Sanitary District of Chicago.

Therefore, it is ordered by the Rivers and Lakes Commission of the State of Illinois that permission be, and it is hereby, given to the Sanitary District of Chicago, a municipal corporation of the city of Chicago, a municipal corporation; the Union Stock Yards & Transit Co., of Chicago, a corporation; and the First Trust & Savings Bank of Chicago, as trustee, representing certain owners

of land abutting that part of said river as set forth in said petition to construct what is known as a bulkhead across said fork of the Chicago River substantially along the east line of said Ashland Avenue in the city of Chicago, and to fill in substantially to the level of the surrounding land all that portion of the Chicago River west of the east line of Ashland Avenue, in the city of Chicago.

Further, it is ordered that all that part of the West Fork of the South Fork of the South Branch of said river lying west of the east line of Ashland Avenue, in the city of Chicago, Cook County, State of Illinois, in the interest of the public health and public welfare, be, and the same is hereby, vacated and closed.

It is further ordered that this order shall be in full force and effect when the said Sanitary District of Chicago shall have filed with the Rivers and Lakes Commission of the State of Illinois, in its offices in the city of Chicago, a complete plan and the said proposed agreement submitted to said commission (which it is represented to the commission contained the terms and conditions agreed upon between the parties in interest relating to the manner and method of construction and completion of said work effecting the east and west arms of the South Fork of the South Branch of the Chicago River) signed by the said Sanitary District of Chicago, and said subscribers thereto.

Entered of record this 8th day of September A. D. 1915.

[SEAL.]

RIVERS AND LAKES COMMISSION OF ILLINOIS,
ARTHUR W. CHARLES, *Chairman*.
L. K. SHERMAN, *Commissioner*.
THOS. J. HEALY, *Commissioner*.

Attest:

CHAS. CHRISTMANN, *Secretary*.

UNITED STATES OF AMERICA,

State of Illinois:

I, Charles Christmann, secretary of the Rivers and Lakes Commission of Illinois, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain order made and entered of record in a certain application lately pending before said commission, wherein the Sanitary District of Chicago applied and petitioned for leave to vacate and close up the extreme West Fork of the South Fork of the South Branch of the Chicago River.

In witness whereof, I have hereunto set my hand and affixed the seal of said Rivers and Lake Commission of Illinois, at Chicago, this 14th day of September, A. D. 1915.

[SEAL.]

CHAS. CHRISTMANN, *Secretary*.

14 No. 6301139. Filed for record April 9, A. D. 1918, at 4:58 p. m.

JOSEPH F. HAAS, *Recorder*.

STATE OF ILLINOIS, COUNTY OF COOK, ss:

I, Joseph F. Haas, recorder of deeds and keeper of the records of said recorder of deeds in and for said county in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the record of a certain instrument filed in said office the 9th day of April, A. D. 1918, as document No. 6301139 and recorded in book 14952 of records at page 217.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Chicago, this 17th day of January, A. D. 1919.

[SEAL.]

JOSEPH F. HAAS, *Recorder*.

EVIDENCE AND FACTS.

Rivers and lakes commission was created to see that the waters are not wrongfully seized or encroached upon or used by any private interests in any way, and from time to time for that purpose to make accurate surveys. (Rivers and harbors act of Congress of the United States approved March 3, 1906.)

SUMMARY.

The acts committed by the State of Illinois, city of Chicago municipality, and the sanitary district, a municipal corporation thereunder, and the Secretary of War, Newton D. Baker, in interposing no objection to the wrongful seizure of the south branch of the Chicago River lying west of Ashland Avenue and the stockyards slip lying between Halsted Street on the east and Center Avenue

(now called Racine Avenue), by private interests under the pretense that it was needed for a public use is contrary to the laws of the ordinance of 1787 of the Constitution of the United States, the constitution of the State of Illinois, affirmed 1870, and by the ordinance of 1787 for the government of the Northwest Territory, it was enacted that the navigable waters leading into the Mississippi and the St. Lawrence Rivers and the carrying places between the same (the Chicago River and its branches), shall be common highways and forever free, as well to the inhabitants of the other said territory as to the citizens of the United States that may be admitted into the confederacy; without any tax, impost, or duty therefor.

THE CONSTITUTION OF ILLINOIS, 1770.

The territory now included within the State of Illinois was part of the territory of the United States northwest of the Ohio River, to which the well-known ordinance of 1787 applied.

Article II. Bill of Rights, paragraph 14, says: "No ex post facto law, or law impairing the obligation of contracts, or making any irrevocable grant of special privilege or immunities, shall be passed." The rivers and Lakes commission of Illinois, approved June 30, 1913, is an irrevocable act.

THE CONSTITUTION OF THE UNITED STATES.

Constitutional provision of the United States prohibiting any ex post facto laws being passed by Congress to in any way affect or abridge the ordinance of 1787, herein cited, upon which the foundation of the constitution of the State of Illinois and the United States Government is based.

ARTICLE I. The Constitution of the United States, in section 9, paragraph 3, recites "that no bill of attainder or ex post facto law shall be passed."

Therefore, any acts passed by the Legislature of the State of Illinois or by Congress of the United States to declare the south fork of the South Branch of the Chicago River lying west of Ashland Avenue and the portion lying east of Ashland Avenue and the stockyard slip lying between Halsted Street on the east and Racine Avenue on the west, nonnavigable waters of the United States and no longer used or needed as commercial highways by water, would be unconstitutional.

The Congress of the United States can not pass an act empowering the United States Government with the right of eminent domain to condemn the bed or the land thereunder of the south fork of the South Branch of the river to be filled for the purpose of extending what is known as Blue Island Avenue, described in a plat that was brought by an official of the Chicago Surface Lines to the Interstate and Foreign Commerce Committee's hearing, October 6, 1922, which was presented as evidence by the parties in favor of passing a congressional act to abandon the river, the extension of Blue Island Avenue over the land made from the bed of the river, herein described, was a pretense that the electric car line extension would be more important than the river remaining an international highway by water—an open port of entry to world's commerce—to the public.

The State of Illinois nor the United States Government have no power to condemn land under the bed of a navigable water of the United States except for the purpose of improving navigation.

Therefore the river can not be taken or condemned for the purpose of extending Blue Island Avenue within the city of Chicago and State of Illinois, because there are other ways and means by which Blue Island Avenue can be extended.

THE LAW.

A canal or other waterway is for a public purpose as to authorized private property to be taken for its construction or improvement.

The Federal and the State Governments may take or injure the rights of riparian owners on navigable streams for the purpose of improving navigation thereon.

Citations: Barney v. Keokuk, 94 U. S. 324; Avery v. Fox, 2 F-case No. 674; Bedford v. U. S., Ct. Cl. 474; Homochitto River Comrs. v. Withers, 29 Miss. 21. This brief is attached to and a part of the testimony given by Miss Olive Leitch before the Interstate and Foreign Commerce Committee hearings on the

bill H. R. 8648 and bill H. R. 940, to declare the south fork of the South Branch of the Chicago River and the stockyards slip nonnavigable and no longer needed for commercial purposes.

This brief, together with the testimony hereto attached, are to be read into the congressional records.

THE HISTORY OF THE CHICAGO RIVER AND ITS BRANCHES, 1830 TO 1922—EXCERPTS.

1. The first rivers and harbors convention was held in 1847 at Chicago. Daniel Webster was the leading spirit. In his address at that convention he said, "That it was important to improve the Chicago River and its branches, because Chicago was soon destined to be the metropolis of the United States; that it would connect New Orleans with Boston through the Mississippi River and the St. Lawrence River."

2. To substantiate his belief we quoted notations from a map of Chicago, carefully drawn and engraved by Rufus Blanchard, etc., headed, "Chicago as an Industrial Center," as per exhibit:

"Chicago substantially is a half-way station between Europe and the Orient, directly on the line of the world's commerce. As trade in the Far East increases, Chicago will rise in importance as a commercial center, and the 'Far East,' as it is called in London and New York, is destined to be called 'Far West' in Chicago."

"Chicago, the greatest port of entry in the United States, had a total entrance and clearance during the year ending June 30, 1899, of 13,688; New York had a clearance of 13,669; New Orleans, 2,718; San Francisco, 2,448."

3. The History of Chicago, volume 2, page 75, dated 1857 to 1871, speaks of the Chicago River as being the narrow, muddy inlet called the Chicago River; has made Chicago one of the greatest ports of entry in the world.

4. In 1899, when the city of Chicago extended the city limits and annexed the town of Lake, in which the South Branch of the south fork of the Chicago River is located, the city at once made soundings of the south fork of the South Branch of the Chicago River, from Robey Street on the west to Thirty-ninth Street on the north, preparatory to the improvement of this part of the Chicago River, as is shown by a contour map dated 1889, filed in the rivers and harbors department of the city of Chicago, found the depth of this branch of the river to be 14 feet to the tread of the stream, and on October 21, 1889, the city passed an ordinance for the straightening of the river and the building of dock lines, and at the same time spread an assessment for the dredging and the building of docks. This assessment was confirmed by the county court. A copy of said proceeding is herewith attached. (Exhibit —.)

5. In 1853 there was a wooden, hand-operated bridge at Thirty-ninth Street, as per business directory and chart of the Chicago River, published by B. F. Davison, 332 South Water Street, Chicago, Ill., as per map herewith attached. (Exhibit —.)

6. A report of the department of public works in 1896 shows bridge Ashland Avenue south fork, length 152 feet, width 134 feet, hand operated, material wood, date 1871, contractor Fox & Howard, cost \$5,000. (P. 116, art. 29, 21st Annual Report.)

7. Also reports show on page 116, article 25, a bridge at Southwestern Avenue, length 125 feet, width 21½ feet, a combination and railroad bridge built in 1830, contractor F. E. Canda, hand operated, timber approaches, cost \$13,000.

8. The following further shows the manner and upkeep of the docks along the banks of the improved river by the property owners. Union Stock Yards & Transit Co., the city of Chicago issued a permit, No. 164, fee \$24.75, through the harbor division department of public works May 18, 1904, to rebuild 99 feet of dock, being the west 99 feet of the 1,099 feet next west of the Ashland Avenue Bridge. Also permit No. 132, issued to the Chicago Junction Railway Co., to build 1,000 feet of dock next west of Ashland Avenue, fee \$250.

The above notation clearly shows the navigability of the south fork of the South Branch of the Chicago River as far west as Western Avenue up to May 18, 1904.

9. The Chicago River Improvements Association February 13, 1905, Grand Pacific Hotel, subject the south fork of the South Branch of the Chicago River, we found to be in a condition as bad as ever, but we are assured that when the sanitary district starts their flow of waters through this channel they will commence improving it, but there again are several obnoxious center piers,

which should be replaced, as a very important part of our commerce is located on this south fork of the Chicago River, as per business chart dated 1883 and 1888. (Exhibit B-1.)

10. In regard to river pollution, the following comment on river pollution is copied from paragraph 3, page 167, of an address by C. L. Deering, chairman of the rivers and harbors committee of the Association of Commerce, in a report of the subcommittee on harbor development to the committee on harbors, wharves, and bridges of the city of Chicago, October 11, 1911.

River and water pollution has been held up to you as a bugbear that is thoroughly covered by the United States laws.

"Section 6 of the Fifty-first Congress, first session, chapter No. 907, date 1890, reads in part: 'That it shall be unlawful to cast, throw, empty any filth or waste of any kind into any port, harbor, haven, navigable river, or navigable waters of the United States which tends to impede or obstruct navigation.'"

For the protection of navigation, which absolutely prohibits the dumping in any navigable waters of any solid matter or anything that would pollute those waters.

And, further, it is under the protection of the police powers of the city.

"A city ordinance has been passed prohibiting the filling up of any water area forming part of the Chicago River or any of its branches within the city limits of Chicago." (Taken from a report of G. A. Lillencranz, assistant engineer of the United States.)

11. Chicago River: The identity, commercial value, and importance of the South Branch of the Chicago River (this open port of entry to the world's commerce) extending through the stockyards, packing town, central manufacturing district, which are in the geographical center of the center of Chicago (as per map, Exhibit —), has been almost lost to the general public through an effort to disguise its real and direct relation or connection to the main course of the Chicago River by misleading names and references, such as Bubbly Creek, and west arm of the south fork of the South Branch of the Chicago River.

12. Chicago River—The destruction of a valuable portion of it. Article: How the packers, stockyards, and the railroad interests linked as one, through the Sanitary District of Chicago, have used their power to crush out commerce and close a portion of the south fork of the South Branch of the Chicago River under the guise and pretense of the word "public health," which was not for a public benefit or public health of the said community but was for the financial and material benefit of private interests. The packers and the stockyards and central manufacturing district, corporations operating along said river, have for the past 54 years polluted this river wholly against the laws of the city of Chicago, State of Illinois, and the Government of the United States, by dumping filth and industrial waste into the said river, which is a navigable water of the United States, without either reason, regard, or consideration for the public health or public benefit, or the rights of the citizens of Chicago.

The charge for closing and filling, under a pretense of public health and public benefit, of a very important part of the Chicago River, the south fork of the South Branch of the Chicago River, is the headwaters of the main river. The attempt to destroy this portion is preposterous.

The real purpose of this general scheme of the packers, stockyards, and the railroad interests to close and fill in said river is to destroy river transportation, which is railroad competition, at this point, by forever putting an end to legitimate river transportation, commerce, or navigation on this part of the Chicago River—which lies in the geographical center of Chicago and extends through the greatest manufacturing and industrial center in the world; also admitted and advertised by these corporations—and also further to confiscate valuable lands.

"After all these years these packers, the Stock Yards Co., and their railroad interests are using the fact of said pollution as a leverage to destroy the south fork of the South Branch of the Chicago River between Thirty-ninth Street and Ashland Avenue."

13. Except from a letter dated January 20, 1900, as per photographic copies dated January 20, 1900, February 22, 1900, and June 4, 1900 (Exhibit B-1), to further show the persistent efforts of the Chicago Junction Railway Co. to crush out river transportation:

"I find that some parties are utilizing property belonging to you on the north bank of the west fork of the stockyards branch of the Chicago River, in handling freight to and from the various industrial plants located in

the stockyards territory, which is transported by boat down the Chicago River in the vicinity of the Rush Street Bridge. This business was formerly handled by rail out of the stockyards and netted us some revenue. I beg to solicit your cooperation to putting an end to this practice, which certainly is but of normal benefit to you and means much to us. (D. Fitzgerald, general superintendent Chicago Junction Railway Co. As per letterhead.)"

Second excerpt:

"Beg to advise that from all I have been able to learn this amounts to considerable business during the navigation season when there is one boat and sometimes two that make daily trips to your dock at south fork of the South Branch of the Chicago River. One of these boats, the *Wallace*, is a scowbuilt steamer and another is a tug, named the *Henry Hill*, which carries two barges. This is depriving us of a great deal of revenue, and in view of the relations existing between yourself and this company I feel that you should assist us in breaking up the practice."

This is taken from the original letter dated February 22, 1900. Signed as per exhibit.

This clearly shows the attitude of the railroad interests in their determination to destroy river transportation wherever possible and by whatever means possible.

14. There has been during the past 20 years persistent misrepresentation of material facts relating to the history of the Chicago River. It is our duty at this time to call your attention to the facts to prevent the further filling in of the said river, which would not be for the public benefit or the public health of said community, but would be for the financial and material benefit of certain corporations operating along said river.

Attention! There is a report by Colonel Keller, made in 1918, which refers to the south branch of the South Fork of the Chicago River at Ashland Avenue and Thirty-ninth Street as a "dead end." This is the report upon which the sanitary district and the city of Chicago attempted to base their rights to close this part of the Chicago River.

It is this report to which the State of Illinois, through the division of waterways, and ourselves as property owners, made protest, together with protest of other obstructions in the Chicago River, as per file in the War Department (No. Chi. R. S. S. W. 825).

15. Soundings taken by the city of Chicago and the United States Government, from 1884 to the present date, all have shown that this south fork of the South Branch of the Chicago River as far as Western Avenue had an average depth of about 12 feet. Soundings taken by United States Government, dated June, 1918, shows the river to have an average depth to the thread of the stream of 17 feet, as per maps herewith attached. (Exhibit B-1.)

16. The filling in of the south fork of the South Branch of the Chicago River west of Ashland Avenue was under the false pretense of the sanitary district by misrepresentation that the said portion filled in was going to be used for a sludge-disposal plants. (Exhibit B-2.)

After the said river was illegally and unlawfully filled in under the pretense of public use, it became what is now known as the new central manufacturing district, as per Exhibit B-1.

NOTE.—All red marks found upon each and every map represents the part of the south fork of the South Branch of the Chicago River now in question.

Also showing the condition of Thirty-ninth Street from the lake shore to township 39 as being a through street with a bridge across the south fork of the South Branch of the Chicago River.

The mile bounded by Ashland Avenue on the west to Halsted Street on the east, Thirty-ninth Street was closed to the public by the said Stock Yards Co. and packing concerns, and it was then when the bridge at Thirty-ninth Street was taken away.

There is now a movement on foot to again extend Thirty-ninth Street as far west as the Zoological Gardens, near the town known as Riverdale. The organization putting over this project is called the Thirty-ninth Street Improvement Association. They are also making the same attempt that the sanitary district did on the west side of Ashland Avenue between Thirty-ninth Street and Ashland Avenue, to close and fill the river under the false pretense and misrepresentation that public health will be conserved, instead of putting a bridge at Thirty-ninth Street, which is for the public benefit, while the closing is for a private benefit, as heretofore stated.

Thirty-ninth Street Bridge, 1904: Twenty-ninth Annual Report, Department of Public Works, page 217, shows Thirty-ninth Street Bridge swung eight times per month.

The above report shows that there was a bridge across Thirty-ninth Street across the south fork of the South Branch of the Chicago River and was in operation.

Ashland Avenue, 1903, and Thirty-ninth Street Bridges swung six times a month, as per report of the public works and buildings, page 144.

In 1920 there was a suit brought in the Federal district court at Chicago against the Illinois Lime & Stone Co. for leaving abandoned barges in the south fork of the South Branch of the Chicago River at our docks, as shown in the Government soundings made the 18th day of June, 1918, and described in said soundings report of wrecked barges. Said suit was settled by the court, and gave the stone company a definite time (80 days) in which to remove the boats, a photographic copy of which is herewith attached.

There is also pending in the same court (case No. 1446, D. C.; equity) bill filed May 8, 1920, to have some barges taken out of the North Branch of the Chicago River.

EXHIBIT B-1.

JANUARY 18, 1907.

MISS MARY McDOWELL,

4630 Gross Avenue, Chicago.

MADAM: Yours of January 15, 1907, is duly at hand. As to a possible filling up of the west arm south fork, South Branch of the Chicago River, for a portion of its length between Iron Street and Western Avenue, I find from records of this office and by inquiry also where that—this west arm up to a point about 600 feet west of Iron Street quite deep—has been dredged once by the United States. Beyond the end of the dredging the depth is much less, the width about 200 feet up to Thirty-ninth Street; from Thirty-ninth to Fortieth Streets the depth is about 6 to 7 feet, sufficient for naphtha launches and light-draft flatboats and scows.

The city has already established dock lines or harbor lines 150 feet wide from Thirty-ninth Street to Ashland Avenue and 175 feet about from Ashland Avenue to Sexton's brickyards, near Leavitt Street.

Some wharves, piers, or docks, though now in a decayed condition, have been built west of Ashland Avenue. Some property owners along the banks between the forks and Ashland Avenue have during the past year come to this office with requests that the United States extend the dredging farther up the arm to Ashland Avenue and Leavitt Street, while some others have protested against its being filled up, and city ordinances have already been passed prohibiting the filling up of any water area forming part of the Chicago River or any of its branches within the city limits.

However, considering that up to the present Congress has not authorized any dredging in this ford above the stockyards, I imagine that the War Department would waive its objection to a partial filling of the western portion of the west arm, provided that such filling was described in definite plans, was requested or assented to by all the interested riparian owners, and was authorized by the city. A request of such nature could be forwarded by this office to the Secretary of War for his action.

Respectfully,

COLONEL BIXBY.

EXHIBIT B-2.

OCTOBER 12, 1912.

MR. FRANCIS P. CONNERY,

City Clerk, Chicago, Ill.

DEAR SIR: Receipt is acknowledged of your letter of the 4th instant in regard to the west fork of the south fork of the South Branch of the Chicago River. This part of the Chicago River is known by the United States as the west arm of the south fork of the South Branch of the Chicago River, and is so referred to in all appropriation acts and other published information concerning navigation of the Chicago River. As to solidly filling the portion of this fork west of Ashland Avenue, it may be assumed that inasmuch as Congress has not authorized any dredging in this fork above the stock yards the War Department would waive its objections to a partial filling of the western portion of the

west arm, provided that such filling was described in definite plans and was requested or was assented to by all interested riparian owners and was authorized by the city council, a request of such nature could be forwarded by this office to the Secretary of War for his action. If you so desire, a representative from this office can appear before the committee to furnish any additional information. By direction and in the absence of Lieut. Col. George A. Zinn,

Very respectfully,

(Signed) P. F. PEGUIS, Chief Clerk.

In 1911 the river was dredged to a depth of 13½ feet under the soundings, Map 8, and report of Col. George J. Zinn by the sanitary district for a bottom width of 75 feet from Ashland Avenue to its upper end, a distance of about 3,300 feet. It has, however, been considerably filled up by refuse from the stockyards.

EXHIBIT B-3.

JULY 14, 1913.

HON. JAMES H. LAWLEY,
Alderman, 1925 West Chicago Avenue, City.

DEAR SIR: The section of waterway referred to in your letter of July 11, 1913, are in my opinion navigable waters and can not be filled up except by an act of Congress.

I would recommend that you address your Representative in Congress and ask that a bill be passed declaring that section of waterway named is no longer required for the purpose of navigation and that the same be abandoned as navigable waters of the United States.

Very respectfully,

GEO. A. ZINN,
Lieutenant Colonel, Corps of Engineers.

EXHIBIT C.

CITY OF CHICAGO,
County of Cook, State of Illinois, ss:

Affiant deposes and says that he came to the city of Chicago in the year 1871, at the age of 18 and took up his residence with a brother, David Starrett, who then lived on Transit Avenue, 300 feet south of Egan Avenue (Thirty-ninth Street and Pershing Road), on the south side of the street, in the town of Lake, whose house was located on the south fork of the South Branch of the Chicago River, in section 5, township 38 north, range 14.

Affiant further says that he has been in the commission business in the stockyards district for more than 40 years and knows the part of the south fork of the South Branch of the Chicago River referred to, having lived upon its banks from 1871 to 1874.

Affiant further states that the south fork of the South Branch of the Chicago River is a natural water course and ran as far west as Western Avenue, and had an average depth of 8 to 10 feet, and was about 40 to 60 feet wide, and that, at no time was the water so shallow that it could be forded by a horse and wagon or a horse and buggy, and that at no time of the year was it ever dried up.

Affiant further states that in about 1871 there was a large distillery located on the south side of Egan Avenue (Thirty-ninth Street) that used great quantities of water from the river to supply their large high-pressure steam boilers used in the drying of the grains and for 200 to 300 cattle.

Affiant further deposes and says that the south fork of the South Branch of the Chicago River, west of Egan Avenue (Thirty-ninth Street) was, during the time of his residency thereon, used for transporting hogs and cattle from the stockyards to the Underwood Packing House, now the Omaha Packing House, which was and is now located on the Chicago River and Halsted Street.

Further affiant sayeth not.

ADRIAN F. STARRETT,

Subscribed and sworn before me this 25th day of November, 1922. This to certify that Adrian F. Starrett personally known to me, whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged and signed the above instrument.

[SEAL]

RUDOLPH A. NORDIN,
Notary Public.

My commission expires January 7, 1926.

AN ORDINANCE FOR THE VACATION OF THE EAST FORK OF THE SOUTH FORK OF THE SOUTH BRANCH OF THE CHICAGO RIVER (STOCKYARDS SLIP) BETWEEN HALSTED STREET ON THE EAST AND RACINE AVENUE ON THE WEST, ETC.

(Journal of Council Proceedings, 1921-22, pp. 742 to 744.)

Be it ordained by the city council of the city of Chicago that all that part of the east fork of the south branch of the Chicago River, otherwise known as stockyards slip, lying west of the west line of Halsted Street and Racine Avenue, etc., as colored in red and indicated by the words "To be vacated" on the plat hereto attached, marked "Exhibit A," be, and the same is hereby vacated and closed, inasmuch as the same is no longer required for public use and for public interest, will be subserved by such vacation.

Section 5 of ordinance. Sanitary district of Chicago is hereby given and granted the right and privilege and authority to construct, reconstruct, use and maintain and operate a conduit or sewer with appurtenance thereto, under and through all that part of the said east fork of the south fork of the Chicago River, lying west of Halsted Street, etc.

Section 8. That the ordinance of April 26, 1869, filed with the city clerk as document 2435 of 1868, entitled "An ordinance concerning the vacation that part of Egan Avenue (Thirty-ninth Street) and all ordinances or parts of ordinances conflicting with this ordinance" (Journal of Council Proceedings p. 460, 1868 to 1869), be, and the same are hereby, repealed.

The ordinance, dated April 26, 1869, was not the ordinance vacating Thirty-ninth Street. It pertained to the dredging of the Chicago River to a depth of 13 feet from the main channel to Brigeport on the south and the rolling mills on the north.

Section 8 in the above ordinance does not repeal the ordinance of September 10, 1869, which created stockyards slip for the reason that under the ordinance of 1887 and the State constitution of said 1870 affirmed and ratified the ordinance of September 10, 1869, which can not be repealed by an ex post facto laws, which the ordinance of April 11, 1921, is.

If the ordinance of April 11, 1921, could have the power to repeal the ordinance of 1869, it would have the power to repeal the charter of the city of Chicago, the constitution of the State of Illinois and the Constitution of the United States Government.

City charter, section 2: To remove and prevent all obstructions in the waters which are public highways in said city and to widen, deepen, and straighten same.

STATEMENT OF MR. FREDERICK C. HACK, ATTORNEY AT LAW, 1400 FIRST NATIONAL BANK BUILDING, CHICAGO, ILL.

Mr. BLACK. Mr. HACK, I think the committee would like to ask you some questions about the title to the bed of these rivers.

Mr. HACK. There are several questions that enter into the matter of the titles here. I had occasion to examine the title to all of the property between Pershing Road (Thirty-ninth Street) and the river itself and west to Ashland Avenue, which is owned by the Central Manufacturing District, which we represent. They also own all of the property fronting on Thirty-ninth Street from Ashland Avenue to Western Avenue, except what they have sold to the Government and several other people. That property fronts on the portion of the river that has been mentioned here as having been filled some years ago. Aside from the general law of the State on the title to the bed of navigable rivers, in this particular case I think there would be no question that the title to the bed of this portion of the river is in the adjoining owners. All of the property which is owned by the Misses Leitch and the property now owned by the Central Manufacturing District and the Mechanical Manufacturing Co. is a part of a subdivision which was made in about 1874. It was a subdivision of the northwest quarter of the northwest quarter of section 5, except the right of way of what is now the Chicago Junction Railway Co., at that time owned by the Transit Co. In the laying out of that subdivision, with the river substantially as it now is, the lot lines of the various lots appear on the map of the subdivision as running to the center of the river, and all of the distances of the lot lines are shown along that center line. All of the conveyances since

that subdivision was made have been made by lot numbers so that I am satisfied that the title of the adjoining owners in this part of the river clearly runs to that line, which is substantially the center of that river.

Mr. DENISON. Of course, if that is true of this part of the river it is true of the other part of the river.

Mr. HACK. That particular situation does not exist in most places. In most places along the Chicago River the subdivisions run to the side of the river or the bank of the stream.

Mr. DENISON. Who owns the land under the water in the main stream?

Mr. HACK. I think that under a decision by our Supreme Court in the Economy Light & Power Co. case, it has been held that in Illinois the title to the bed of all rivers is in the adjoining owners. In navigable streams it is subject to the right of the public for navigation purposes and in nonnavigable streams there is not any such easement, but there is no doubt about the title to all beds of streams in the State of Illinois being in the adjoining owners.

Mr. DENISON. I asked yesterday that the attorney for some of the parties interested here be called. At that time there were some legal questions that were confusing to me, but last night up until about midnight I studied the questions from some briefs that I got hold of, so that my doubts on some of those questions have been removed. There is on question I would like to submit to you and doubtless you have looked it up. The jurisdiction over navigable streams, as I understand, in this country, in all the States, is in the State governments, subject to the limitations that were imposed by reason of the grant of power to the Federal Government to regulate interstate commerce.

Mr. HACK. I think that is correct.

Mr. DENISON. In other words, had it not been for the commerce clause of the Constitution by which the State delegated to the Federal Government the right to regulate commerce between the States, the whole jurisdiction over navigable waters within the States would have been in the State governments.

Mr. HACK. Yes.

Mr. DENISON. Now, if the Congress waives that right by legislation, does the State then have its sovereign right over the navigable rivers within its boundaries?

Mr. HACK. I think that the law on that is clear that the jurisdiction of the State and of Congress over navigable waters within the State is concurrent and that the only limitation on the State is that if Congress has acted in a particular matter the State can not act in a way that would contravene something that Congress has done. It does not oust the State of jurisdiction, and if Congress has acted in a certain way and the State in some other matter on that same river takes action, it has the right to do so, and I think that the effect of this particular act, which is merely to declare a portion of the river nonnavigable, does not in any way oust the jurisdiction of the State. I had occasion at the time this western portion of the river that Miss Leitch spoke of, extending west from Ashland Avenue, was closed—I had charge of that matter and handled it in the appearances before the engineer of the War Department and the board of which Mr. Sackett is now head, but I think he was not head of it at that time, and also before the city council.

I had occasion to look into the question very carefully. I think in reference to this particular act, the mere fact that Congress takes action declaring that the river is nonnavigable does not oust the State, and we would have to go to the State of Illinois because under our legislation I am satisfied that the State of Illinois has jurisdiction of a navigable stream and probably has jurisdiction of a stream which has been made navigable by artificial means. I think there is not any doubt that this portion of the river was not navigable in its natural state. Some years ago, at the request of the sanitary district, I procured a number of affidavits. The sanitary districts were interested in this entire project of closing up the eastern end of the river and also possibly closing up this end of the river. They were discussing at that time the matter of building a big settling basin so as to take care of all of the sewage from the stockyards and the industrial wastes which Alderman Eaton has spoken of, and in that connection they asked me to determine whether this branch of the river that we are now discussing—this particular portion of it—was under the jurisdiction of Congress, and of course the question of whether it was navigable in its natural state was a most important question. I had investigations made and procured a number of affidavits. We provided 10 affidavits which I have here and these affidavits are all affidavits of persons who

lived near this branch of the river between 1870 and about 1885. It is apparent from a reading of these affidavits that up to Thirty-ninth Street—that is, between Ashland Avenue and Thirty-ninth Street—the river at that time was merely a little creek, perhaps 10 to 14 feet wide, with water ranging in depth from 2 to 5 feet, and dry in the summer time.

Mr. GRIFFIN. Do you want these affidavits in the record?

Mr. HACK. Yes; I think the affidavits should go in the record.

(The affidavits referred to follow.)

STATE OF ILLINOIS, County of Cook, ss:

GEORGE T. BEERS, being first duly sworn, residing at 3414 South Paulina Street, Chicago, Ill., with reference to his knowledge of what is now called Bubbly Creek or West Fork of South Branch of Chicago River, affiant states: I was born in 1838, in Newtown, Fairfield County, Conn. I came to Chicago with my parents in 1847. We located and resided on a farm situated about what is now called Fortieth and Wood Streets. Our house stood about 1 rod north of the creek. At this point the creek may have been 3 feet deep. This creek ran from a point at about what is now known as Fortieth and Roby Street. It connected at that point with what we termed in early days as the State ditch. This old creek ran in an easterly direction. It crossed what is now known as Ashland Avenue, there being no bridge of any kind at that point then. There was a small country bridge built at what is now known as Thirty-ninth Street. It crossed this creek just at about the north line of Fowler's packing house, just west of Fowler's. This bridge was constructed in the year of 1854 or 1855. It was a stationary bridge. I left the farm mentioned in 1866 and went into the grocery business at Greely and Archer Avenues. In all my years on the farm there was never any navigation on this creek; in fact no kind of a boat larger than a rowboat could go up this creek. I have been in this neighborhood for the past 70 years. Been here continually living at this address for the past 44 years. While I have been living here I have seen the changes in the creek from year to year. In the year of about 1880 we leased our land along the creek to Hayat & Alsip and shortly after this the dredges came up and dug out clay from our land west of Ashland Avenue, Ashland Avenue being the section line. After the dredges started working the creek became larger and larger until it is as it now stands. In the early days there was grass growing on both sides of the creek. In places the creek was 12 to 14 feet wide at the bottom; it had sloping sides, being wider on top, the water being from 3 to 5 feet deep in places. It was so east of Ashland Avenue; none of the creek, however, was navigable. Some time after 1865 the Stock Yard Co. put a dam in the creek between Thirty-ninth Street and Ashland Avenue and used water out of same. The part of the river that runs up to Halstead Street was all dug and made. It used to be a country road in the early days.

Further affiant says not.

GEORGE T. BEERS.

Subscribed and sworn to before me this 22d day of November, 1917.

[SEAL]

JOHN B. GREEN,
Notary Public.

Witness:

O. R. HOERSTEL.

STATE OF ILLINOIS,
County of Cook, ss:

HENRY E. WILLMOTT, being duly sworn with reference to the way the old original creek at Thirty-ninth Street ran, affiant states: I came to Chicago from Toronto, Canada, in the fall of 1872. My family followed me here in 1873. During this year we moved into a house located at what is now known as Exchange and Packers Avenue in 1874. I moved a house onto an acre of ground that I rented from Sam Beers, located at what is now known as Forty-second and Pauline Street. We lived there between five and six years. The creek now known as Bubbly Creek was a little country creek running eastward from Western Avenue over Ashland Avenue in a winding direction toward the north. When it got down around Fowler's packing house this creek was about 12 or 14 feet wide, not at all navigable east of Ashland Avenue. I remember

a small stationary bridge at Thirty-ninth crossing this creek, just west of the Fowler Packing Co. I have seen the way the creek runs now and see that it has been all changed and a new channel made. In my time around there I never seen any kind of a boat on this creek. It was not navigable in any way.

Witness:

O. R. HOERSTEL.

Subscribed and sworn to before me this 22d day of November, A. D. 1917.

[SEAL.]

JOHN B. GREEN,
Notary Public.

I have read the above and it is true and correct. I know the creek in the seventies and it was not very wide—a plank would reach across it in places.

CATHERINE WILLMOTT,
5655 South Peoria Street.

Subscribed and sworn to before me this 22d day of November, A. D. 1917.

[SEAL.]

JOHN B. GREEN,

Witness:

O. R. HOERSTEL.

STATE OF ILLINOIS,

County of Cook, ss:

Mrs. ANDREW JORDAN, residing at 2445 West Thirty-ninth Street, Chicago, Ill., being first duly sworn with reference to the old creek south of Thirty-ninth Street that crosses Ashland Avenue in an easterly and westerly direction, creek now known as Bubbly Creek, affiant states:

I was born in County Wexford, Ireland, in the year of 1850. I landed in Quebec, Ontario, in the year of 1869. I came to Chicago, Ill., in May, 1871. I was married in 1874. Between the years of 1871 and 1874 I had friends living in what was then known as Bridgeport and whom I frequently visited, and during those years I first became acquainted with the old creek. We moved to Thirty-ninth Street and Campbell in the year 1878, and am living there ever since. I distinctly remember the old creek east of Ashland Avenue and the brick yard east of Ashland Avenue, a little north of the old creek. At Thirty-ninth Street there was a little narrow stationary bridge about 20 feet long and about 5 feet wide where brick wagons used to cross, the water being about 2 or 3 feet deep. I am positive that this creek was not navigable, in fact, no boat could go up to Ashland Avenue as creek in some places was dry between Thirty-ninth Street and Ashland Avenue. This creek was made from the surface water running into it from Western Avenue from year to year. I have seen the dredge working in the brickyards digging clay out of this old creek, and these dredges made the creek what it is to-day.

Further affiant says not.

Mrs. ANDREW JORDAN,

Subscribed and sworn to before me this 27th day of November, A. D. 1917.

[SEAL.]

JOHN B. GREEN,
Notary Public.

STATE OF ILLINOIS,

County of Cook, ss:

PATRICK H. O'BOYLE, residing at 5205 May Street, Chicago, Ill., with reference to old creek now known as Bubbly Creek, located south of Thirty-ninth Street and running in an easterly and westerly direction across Ashland Avenue; affiant states:

I am 71 years old; I first knew the little creek in 1871. I worked for the Leach & Wellner Distilling Co., located on the south and east bank of the creek where the bend in same was about two blocks east of Ashland Avenue. I was employed as fireman and watchman on the night of February 22, 1873, distillery burned down. I distinctly remember the little creek. It was about 12 or 14 feet wide back of the distillery. I often seen this creek perfectly dry, and in the spring of the year there was 2 or 3 feet of water in it. I am posi-

tive this creek was not navigable south of Thirty-ninth Street in the latter part of the seventies or in the early eighties. Brickyards came into the neighborhood and used clay out of the little creek, and they gradually kept deepening and widening the creek until they made it what it is to-day. I lived at Thirty-ninth and Ashland Avenue for 43 years, and know positively that this creek was not navigable south of Thirty-ninth Street up to the early eighties.

Witness:

O. R. HOERSTEL.

Subscribed and sworn to before me the 27th day of November, A. D. 1917.

JOHN B. GREEN,
Notary Public.

STATE OF ILLINOIS,

County of Cook, ss:

MARQUIS GORHAM, residing at 4208 South Rockwell Street, with reference to Bubbly Creek in its early days, affiant states:

I was born in the year of 1872, in Fort Howard, Wis. I came to Chicago, Ill., in the spring of 1873 with my parents. They located and resided at what was then known as Beers and Freeman Streets. Thirty-fourth Place now was then Freeman Street, and Beers Street then is now Wood Street. I have ever since and always been in this neighborhood; never been away from the old sixth ward, now fifth ward; in my boyhood days I put in most of my time in around the old creek near Fortieth Street. I distinctly remember creek east of Ashland Avenue, and I know positively that there was no navigation on it between Ashland Avenue and Thirty-ninth Street. At Thirty-ninth Street was located what we called our swimming hole. There was a little stationary bridge at this point about 20 feet wide. The water at this point was about 3 or 4 feet deep, some places not so deep. I distinctly remember that there was no navigation west or south of Thirty-ninth Street. I remember this creek since I was 6 years old, and seen the changes made in it from year to year. I seen the dredges deepening and widening it until it is what it is to-day. This part of the creek that I speak of has all been made.

Witness:

O. R. HOERSTEL.

Subscribed and sworn to before me this 20th day of November, A. D. 1917.

[SEAL.]

JOHN B. GREEN,
Notary Public.

STATE OF ILLINOIS,

County of Cook, ss:

WILLIAM R. WOODS, residing at 1030 West Fifty-first Street, being first duly sworn, with reference to Bubbly Creek in its early days, affiant states:

I was born November, 1852, County Love, Ireland. I came to Chicago in 1880 and went to work for Fowler Packing Co. I distinctly remember the old creek in that year and know that it was not navigable south of Thirty-seventh Street. I hunted snipe and duck on the old creek, and I distinctly remember walking across the creek between Thirty-ninth Street and Ashland Avenue. I remember the little stationary bridge across Thirty-ninth and Ashland Avenue. The water was probably 3 feet deep, and a person could not get a good big rowboat up this creek east of Ashland Avenue. I seen the dredges working on this creek, deepening and widening same until it is now made a part of the river. In early days creek was nothing like it is now. It has all been changed. In early days it was not navigable between Thirty-ninth Street and Ashland Avenue.

Witness:

O. R. HOERSTEL.

Subscribed and sworn to before me this 26th day of November, A. D. 1917.

[SEAL.]

JOHN B. GREEN, Notary Public.

WM. R. WOODS.

STATE OF ILLINOIS,
County of Cook, ss:

J. HARRY LUCAS, residing at 3438 South Paulina Street, Chicago, Ill., being first duly sworn, with reference to Bubbly Creek in its early days affiant states:

I was born in the year of 1865, Gloucester, England. I came to Chicago, Ill., in the year of 1872. Located and resided at what is known now as Lyman and Throop Streets. My folks and myself moved to 1853 West Thirty-fifth Street in 1875, and am living in that neighborhood ever since. I distinctly remember the old creek since 1875, especially the part east of Ashland Avenue, and know in the early days that it was not navigable between Thirty-fifth Street and Ashland Avenue. There was an old mud scow at Thirty-fifth Street that was used as a means of getting across the creek there; it was stationary at that point. I have seen the changes made in this creek in the past 40 years and seen the dredges working from year to year widening and deepening the creek until they made it what it is to-day. In the early days creek at Thirty-ninth Street was about 20 feet wide; in places 3 or 4 feet deep, in other places not so deep. It depended on the season, as the deepness was caused by surface water running into creek. No navigation of any kind on creek in early days.

Further affiant says not.

Witness:
O. R. HOERSTEL.

Subscribed and sworn to before me this 26th day of November, A. D. 1917.
[SEAL.] JOHN B. GREEN, Notary Public.

J. HARRY LUCAS.

STATE OF ILLINOIS,
County of Cook, ss:

ALLEN FULLERTON, residing at 7832 Peoria Street, being first duly sworn with reference to Bubbly Creek in its early days, affiant states:

I was born in Ireland in the year of 1848. I came to Chicago in May, 1868, and went to work for the Union Stock Yards Distilling Co., then located about where Friedman Manufacturing Co. is now located. I distinctly remember the dam across the little creek. It was, in my opinion, a little northwest of the boiler room. I left Chicago in 1869 and went to Texas. Returned from Texas in 1873; not around stockyards between 1873 and 1878. In 1878 I went to work for the Anglo and been there most of the time ever since. In my opinion creek was about 12 or 14 feet wide, and am positive that it was not navigable southwest of Thirty-ninth Street. I doubt whether they could shove a yawl boat up there. I seen dredges working in brickyard on creek, and they, in making it deeper and wider, left creek as it now stands.

Witness:
O. R. HOERSTEL.

Subscribed and sworn to before me this 28th day of November, A. D. 1917.

ALLEN (his x mark) FULLERTON.

STATE OF ILLINOIS,
County of Cook, ss:

JAMES CULLEN, residing at 3908 Southwestern Avenue, with reference to old creek, now known as Bubbly Creek, affiant states:

I was born in County Wexford, Ireland, in the year of 1852. I came to America, landing in Quebec, Ontario, in 1859. I came to Chicago in the year of 1868. In 1869 I came to what is now called Brighton. I worked for C. C. & L. C. R. R. From that year on I became acquainted with the stockyard district and the old creek. I distinctly remember the little stationary bridge across the creek at Thirty-ninth Street just west of Fowler's packing house. This creek was about 12 or 16 feet wide and probably 2 feet deep. In the seventies this creek was not navigable east of Ashland Avenue, especially be-

tween Thirty-ninth Street and Ashland Avenue. In later years in the eighties brickyards came in around the neighborhood and later steam shovels worked on creek and dug same out and left it as it is to-day. The creek to-day has all been dug and made and is nothing like the creek was in olden days. All east of Ashland Avenue has been made.

JAS. CULLEN.

Witness:
O. R. HOERSTEL.

Subscribed and sworn to before me this 23d day of November, A. D. 1917.
[SEAL.] JOHN B. GREEN, Notary Public.

STATE OF ILLINOIS, County of Cook, ss:

DANIEL J. LAUGHLIN, residing at 5426 South Marshfield Avenue. With reference to old creek, now known as Bubbly Creek, running eastward across Ashland Avenue, between Thirty-ninth Street and about Fortieth Street, affiant states:

I was born in Chicago, Ill., on April 22, 1864. In my boyhood days I spent most of my time in and around the stockyards, mostly around the old creek, now known as Bubbly Creek. I distinctly remember the little stationary bridge across this creek at Thirty-ninth Street. I was then about 10 years old, and I often seen children walking in the creek around this bridge between it and Ashland Avenue. There used to be trees along on the north bank of this creek. Years afterwards these trees were blown out with dynamite. In my days around there I am positive that this creek was not navigated between Thirty-ninth Street and Ashland Avenue; there was not over 2 or 3 feet of water in it, and in my opinion it was not over 20 feet wide at the widest point. I am still out around the stockyards and know that the present Bubbly Creek has all been made since I first seen it. I seen the dredges working in different parts of it as the years went by until they dug as much dirt out of it as it stands. I seen them dynamiting the bottom out of creek east of Ashland Avenue about 30 years ago.

DANIEL J. LAUGHLIN.

Witness:
O. R. HOERSTEL.

Subscribed and sworn to before me this 23d day of November, A. D. 1917.
[SEAL.] JOHN B. GREEN, Notary Public.

Mr. HACK. In view of those affidavits, I think it is clear that this portion of the river was not navigable in its natural state, and it became so only by the digging of the channel, which was started by the various industries which had brickyards there. The soil there is a clay soil, and most of the channel of the river from Thirty-ninth Street to Ashland Avenue and west to what used to be the end of the channel was an artificial channel made by the digging of clay holes.

Mr. BLACK. Mr. Hack, some question has been raised here about the ordinance of 1899. What became of that ordinance?

Mr. HACK. That ordinance was an ordinance with reference to a portion of the river which is not in question here. That is the east fork of the river, what was known as the stockyards' slip. Perhaps you are familiar with that situation. That ordinance was passed in 1899 authorizing the persons who owned the land on both sides of it to dig that channel. The ordinance itself was revoked by an ordinance of the city council passed in July, 1921, closing the stockyards' slip, but that has nothing to do with this question. That is the other side of the river.

Mr. BLACK. I simply wanted to clear that up, because that ordinance has been mentioned, and I wanted to show that it had been expressly repealed.

Mr. HACK. I am satisfied that the owners along both sides of this branch of the river have rights in the river aside from the navigability of the river. I think the only effect of the passage of this act would be to establish that so far as Congress is concerned it does not care what is done with the river. I think that whoever seeks to close the river would still have to go to the State and probably have to go to the city council to effectually close it; and I

think, so far as the rights of the adjoining owners are concerned, they have property rights in that river aside from the rights that Congress gives them; a right which would have to be condemned, and, in my judgment, when proceedings are had to open up a wide thoroughfare there, the condemnation proceedings which will have to be conducted in any event to get additional land for the street will have to condemn their rights, and they will have an opportunity of proving the value in dollars and cents of their rights in this land and its accessibility by water.

Mr. DENISON. I think the principle of law is pretty well settled that a declaration by a legislature or by Congress, so far as that is concerned, to the effect that a certain river is navigable, does not make it so if it is not navigable in fact.

Mr. HACK. I think that is correct.

Mr. DENISON. And I assume that the reverse of that proposition would be true, that a declaration that it is not navigable would not make it so if it was navigable in fact; but I do not know that there are any decisions to that effect, although there are plenty of decisions on the other proposition.

Mr. HACK. I think that is true.

Mr. DENISON. And I can not see any difference in the logic of the two cases. I was just wondering whether or not the passage of a law by Congress declaring that this part of the river is nonnavigable would in any way affect the jurisdiction of the State itself over navigable waters within its own borders or would in any way estop the State from asserting its jurisdiction; and I wanted to get the benefit of your judgment, and if you wish, in revising your remarks, to add any authorities to your statement to back up your judgment we would be pleased to have you do so.

Mr. HACK. I think there is no question but what you have stated the law correctly. I think it is very difficult to find a case which is on all fours with this case; a case where Congress having had jurisdiction of a certain river voluntarily ousts itself of that jurisdiction and then the State seeks to maintain its jurisdiction. I have not myself seen such a case in the books.

Mr. DENISON. I have not either.

Mr. HACK. But I do not think there is any doubt about it, because the decisions are clear that the jurisdiction of the State and of Congress are concurrent, and there is not any decision I have ever seen that states that when Congress acts it ousts the State. It does not oust the State. It simply prevents the State from doing something which is in derogation of what Congress has done.

Mr. DENISON. In derogation of what the State has delegated the Congress to do.

Mr. HACK. Yes; because Congress has only limited jurisdiction. It only has what jurisdiction the State has given to it.

Mr. DENISON. I had the thought in mind that a mere declaration by Congress in legislative form that a certain part of a river is nonnavigable amounted to nothing more than that Congress refuses to regulate commerce under the commerce clause of the Constitution on that part of the river.

Mr. HACK. I am satisfied that that is the law.

Mr. DENISON. And leave it for the State to go ahead and regulate it as much as it pleases.

Mr. GRAHAM. There is not any question but what that is the law. There is a very analogous case in my own mind now where I had an act of Congress passed some years ago by which a branch of the Mississippi River was declared nonnavigable. A drainage district had been organized and wanted to build a levee across there. In order to do so, we had to have it declared nonnavigable and Congress did so, but then the drainage district had to proceed under eminent domain and condemn the right of way under the laws of the State in order to build across that ditch. That would be true here.

Mr. HACK. I think that case is in point.

Mr. GRAHAM. Exactly so. The waiver of the Federal rights does not give the State any right to build across that river until you do what you have to do in order to acquire a right of way and settle all damages that you occasion. It certainly seems to me that that must be the law.

Mr. BLACK. I do not think there is any question about that.

Mr. DENISON. Then it is your judgment, Mr. HACK, that if this law should be passed by Congress that is now pending with reference to what is called Bubbly Creek, the State of Illinois still would have the right to regulate commerce upon that part of the river, and in the exercise of that right could prevent any obstruction or prevent filling it up, if it wanted to do so?

Mr. HACK. I think so. I am not clear on the question of the jurisdiction of the State in cases of artificial channels which are connected with navigable rivers. We have here a case of a river which I am satisfied the fact is that in its natural state is not a navigable stream.

Mr. DENISON. But assuming for the purposes of this question that it should be held to be a navigable stream and this action was taken by Congress, then is it in your judgment that the State would have complete jurisdiction over that part of the stream?

Mr. HACK. I think it would.

Mr. DENISON. So as to prevent any obstruction to navigation there?

Mr. HACK. I think so. I think that this action by Congress does not in any way affect the State's authority to do whatever it has the authority to do anyhow. I think this action does not affect the State in any way, and if, as a matter of fact, this is a navigable stream the State has authority to regulate the use of it, prevent the closing of it, and otherwise govern it.

Mr. DENISON. If you happen to find any decisions to the contrary, I would be glad if you would insert them with your remarks.

Mr. HACK. I will be glad to file a statement of authorities along that general line.

Mr. GRAHAM. That will be very helpful.

Mr. HACK. The statement of authorities follows; also copy of a letter from the United States Engineers office at Chicago, dated February 18, 1918, to the Chief of Engineers, relative to Bubbly Creek:

RE CLOSING OF THE PORTION OF THE WEST FORK OF THE SOUTH BRANCH OF THE SOUTH BRANCH OF THE CHICAGO RIVER EXTENDING FROM WEST THIRTY-NINTH STREET TO SOUTH ASHLAND AVENUE.

JURISDICTION OF THE STATE AND FEDERAL GOVERNMENTS.

It appears well-established law that where Congress has assumed and maintains its jurisdiction over a navigable stream, the State legislature has no power to enact any law which would conflict with the jurisdiction so assumed. It is equally clear, however, that Congress and the State legislatures have concurrent jurisdiction over the improvement of navigable channels within the State.

In *Covington Bridge Co. v. Kentucky*, 154 U. S. 204, the Supreme Court was considering the power of a State to regulate tolls upon a bridge connecting it with another State without the assent of Congress. In the course of his opinion Justice Brown said, on page 211:

"Within the second class of cases—those of what may be termed concurrent jurisdiction—are embraced laws for the regulation of pilots (citing cases); quarantine and inspection laws and the policing of harbors (citing cases); the improvement of navigable channels (citing cases); the regulation of wharves, piers, and docks (citing cases); the construction of dams and bridges across the navigable waters of a State (citing cases); and the establishment of ferries (citing cases).

"Of this class of cases it was said by Mr. Justice Curtis, in *Cooley v. Board of Wardens*, 13 How. 280, 318: 'If it were admitted that the existence of this power in Congress, like the power of taxation, is compatible with the existence of a similar power in the States, then it would be in conformity with the contemporary exposition of the Constitution (Federalist, No. 32), and with the judicial construction, given from time to time by this court, after the most deliberate consideration, to hold that the mere grant of such a power to Congress did not imply a prohibition on the States to exercise the same power; that it is not the mere existence of such a power, but its exercise by Congress, which may be incompatible with the exercise of the same power by the States, and that the States may legislate in the absence of congressional regulations.'"

In the *Minnesota Rate cases*, 230 U. S. 352, the court, on page 404 and following, reasserts the doctrine laid down in the case just quoted to the effect that where Congress has not acted the State may still regulate interstate commerce within its own boundaries. See also *Packet v. Catlettsburg*, 105 U. S. 559.

In *Gould on Waters*, third edition, page 80, the author says:

"Under the Constitution of the United States a State has the right, if its legislation does not conflict with the action of Congress upon the same subject, to authorize bridges and dams across the navigable waters within its

limits; to license wharves, piers, and docks intruding upon such waters; to establish harbor lines to which wharves may be extended; to prescribe the places and manner in which vessels may lie in a harbor, what lights they are to carry at night, or what course they shall pursue in navigating a river; to pass reasonable quarantine and inspection laws, and pilotage, or port regulations; to regulate harbor beacons, buoys, salvage, and similar matters of a local and limited nature; to improve the navigability of its waters, and to authorize the collection of tolls in consideration of such improvements."

In *Cummings v. Chicago*, 188 U. S. 410, a bill was filed by certain citizens of the State of Illinois against the city of Chicago for the purpose of obtaining a decree preventing the construction of a dock in front of certain lands owned by the plaintiffs and situated on the Calumet River. In the course of its opinion, the court, speaking by Justice Harlan, on pages 426-427, said:

"We come now to the merits of the suit as disclosed by the bill. The general proposition upon which the plaintiffs base their right to relief is that the United States, by the acts of Congress referred to and by what has been done under those acts, has taken 'possession' of Calumet River, and so far as the erection in that river of structures such as bridges, docks, piers, and the like is concerned, no jurisdiction or authority whatever remains with the local authorities. In a sense, but only in a limited sense, the United States has taken possession of Calumet River, by improving it, by causing it to be surveyed, and by establishing lines beyond which no dock or other structure shall be erected in the river without the approval or consent of the Secretary of War, to whom has been committed the determination of such questions. But Congress has not passed any act under which parties having simply the consent of the Secretary, may erect structures in Calumet River without reference to the wishes of the State of Illinois on the subject. We say the State of Illinois, because it must be assumed, under the allegations of the bill, that the ordinances of the city of Chicago making the approval of its department of public works a condition precedent to the right of any one to erect structures in navigable waters within its limits, are consistent with the constitution and laws of that State and were passed under authority conferred on the city by the State.

"Calumet River, it must be remembered, is entirely within the limits of Illinois, and the authority of the State over it is plenary, subject only to such action as Congress may take in execution of its power under the Constitution to regulate commerce among the several States. That authority has been exercised by the State ever since it was admitted into the Union upon an equal footing with the original States."

From the above authorities, it is clear that both Federal and State Governments may at the same time legislate concerning a navigable stream, provided, however, that State legislation must never conflict with that of Congress. It is equally true that where Congress does not attempt to exercise its jurisdiction, the State has the power by legislation either to improve or to wholly destroy the navigability of a stream within its territory.

Probably the leading case in this field is that of *Willson v. The Blackbird Creek Marsh Co.*, 2 Peters 245. In that case the plaintiff under the authority of the State legislature had built a dam across a navigable creek. The defendant broke and injured this dam and when sued in trespass sought to justify under the plea that the structure interfered with interstate commerce and under the Constitution of the United States had no right to be there. The decision was written by Mr. Chief Justice Marshall, and in the course of his opinion, in which he upheld the power of the State legislature to license the building of the dam inasmuch as Congress had assumed to take no jurisdiction over this particular stream, he said, on page 250:

"The act of assembly by which the plaintiffs were authorized to construct their dam shows plainly that this is one of those many creeks, passing through a deep level marsh adjoining the Delaware, up which the tide flows for some distance. The value of the property on its banks must be enhanced by excluding the water from the marsh, and the health of the inhabitants probably improved.

"Measures calculated to produce these objects, provided they do not come into collision with the powers of the General Government, are undoubtedly within those which are reserved to the States. But the measure authorized by this act stops a navigable creek and must be supposed to abridge the rights of those who have been accustomed to use it. But this abridgment,

unless it comes to conflict with the Constitution or a law of the United States, is an affair between the government of Delaware and its citizens, of which this court can take no cognizance.

"The counsel for the plaintiffs in error insist that it comes in conflict with the power of the United States 'to regulate commerce with foreign nations and among the several States.'

"If Congress has passed any act which bore upon the case, any act in execution of the power to regulate commerce, the object of which was to control State legislation over those small navigable creeks into which the tide flows, and which abound throughout the lower country of the Middle and Southern States, we should feel not much difficulty in saying that a State law coming in conflict with such act would be void. But Congress has passed no such act. The repugnancy of the law of Delaware to the Constitution is placed entirely on its repugnancy to the power to regulate commerce with foreign nations and among the several States, a power which has not been so exercised as to affect the question.

"We do not think that the act empowering the Black Bird Creek Marsh Co. to place a dam across the creek can, under all the circumstances of the case, be considered as repugnant to the power to regulate commerce in its dormant state or as being in conflict with any law passed on the subject."

In *Manigault v. Springs* (169 U. S. 475) a bill was filed to enjoin the damming of a creek in South Carolina built under the authority of the State legislature. The bill which declared this creek to be navigable was demurred to. The court sustained the demurrer, using the following language in the course of its opinion:

"As an original proposition we have repeatedly held that, in the absence of legislation by Congress, a State has power to improve its lands and promote the general health by authorizing a dam to be built across its interior streams, though they were previously navigable to the sea by vessels engaged in the coastwise trade."

To the same effect as the two cases just quoted are the following cases: *Transportation Company v. Chicago*, 99 U. S. 435; *Cardwell v. Bridge Company*, 113 U. S. 205; *Pound v. Turck*, 95 U. S. 459; *Gilman v. Philadelphia*, 70 U. S. 713.

In the last case the court took occasion to make the following pertinent remarks, on page 729:

"It must not be forgotten that bridges, which are connecting parts of turnpikes, streets, and railroads, are means of commercial transportation, as well as navigable waters, and that the commerce which passes over a bridge may be much greater than would ever be transported on the water it obstructs.

"It is for the municipal power to weigh the considerations which belong to the subject and to decide which shall be preferred and how far either shall be made subservient to the other."

All the cases so far cited have sustained the power of the State to destroy the navigable character of a stream unless Congress has assumed jurisdiction over the waters in question. In principle the same authority would be vested in the State legislature to improve its waterways for navigation even though Congress refrained from so doing, and the cases are equally unanimous on this side of the proposition. One of the leading decisions, moreover, happened to be concerned with the power of the State of Illinois to improve the Illinois River for purposes of navigation.

In *Huse v. Glover* (15 Fed. 292) a bill in equity was brought to restrain the defendants from exacting certain tolls charged by them for the right of passage through locks on the Illinois River. These tolls were levied under the authority of an act of the Legislature of the State of Illinois. In an opinion by Justice Harlan, sitting in the Circuit Court for the Northern District of Illinois, the demurrer to the bill was sustained. In the course of his opinion Justice Harlan said, on page 296:

"The doctrines of the adjudged cases sustain the authority of this State—there being no act of Congress forbidding it—to construct locks and dams upon the Illinois River. Her avowed object in so doing was to improve the navigation of that river and effect a reduction of freights to the headwaters of Lake Michigan and to the Mississippi River. The mode and extent of such improvement, in the absence of national legislation, based upon the power of Congress to regulate commerce, was for her determination. Her discretion in

such matters is not to be controlled by the courts so long as Congress does not interfere."

When the case of *Huse v. Glover* came before the Supreme Court (119 U. S. 543), the court stated that in affirming the opinion expressed by the court below little more could be done than to repeat the argument there made. Justice Field did, however, somewhat enlarge upon the opinion of Justice Harlan, using on page 548 the following language:

"The State is interested in the domestic as well as in the interstate and foreign commerce conducted on the Illinois River; and to increase its facilities and thus augment its growth it has full power. It is only when in the judgment of Congress its action is deemed to encroach upon the navigation of the river as a means of interstate and foreign commerce that that body may interfere and control or supersede it. If in the opinion of the State greater benefit would result to her commerce by the improvements made than by leaving the river in its natural state—and on that point the State must necessarily determine for itself—it may authorize them, although increased inconvenience and expense may thereby result to the business of individuals. The private inconvenience must yield to the public good. The opening of a new highway or the improvement of an old one, the building of a railroad, and many other works in which the public is interested may materially diminish business in certain quarters and increase it in others, yet for the loss resulting the sufferers have no legal ground of complaint. How the highways of a State, whether on land or by water, shall be best improved for the public good is a matter for State determination, subject always to the right of Congress to interpose in the cases mentioned." *Shoemaker v. McConnell*, 1 McLean, 337; *Kellogg v. Union Co.*, 12 Conn. 7; *Thames Bank v. Lovell*, 18 Conn. 500; *S. C.* 46 Am. Dec. 332; *McKynolds v. Smallhouse*, 3 Bush, 447.

In *Sands v. Manistee River Improvement Co.*, 123 U. S. 288, the question again arose as to the power of the State legislature to authorize a corporation to collect tolls for the purpose of aiding that corporation to improve the navigability of a stream. The suit was an action at law for the collection of the tolls. The defendant pleaded the invalidity of the statute authorizing the improvement of the river. The court found for the plaintiff, saying, on page 295:

"The Manistee River is wholly within the limits of Michigan. The State, therefore, can authorize any improvement which in its judgment will enhance its value as a means of transportation from one part of the State to another. The internal commerce of a State—that is, the commerce which is wholly confined within its limits—is as much under its control as foreign or interstate commerce is under the control of the General Government, and, to encourage the growth of this commerce and render it safe, the States may provide for the removal of obstructions from their rivers and harbors, and deepen their channels and improve them in other ways, if, as is said in *County of Mobile v. Kimball*, the free navigation of those waters, as permitted under the laws of the United States, is not impaired, or any system for the improvement of their navigation provided by the General Government is not defeated. 102 U. S. 631, 639. And to meet the cost of such improvements the States may levy a general tax or lay a toll upon all who use the rivers and harbors as improved."

See also *Monongahela Navigation Co. v. United States*, 148 U. S. 312, at 320 and following.

There has been a number of decisions in the State of Illinois, all sustaining the doctrine of the cases above outlined.

In *People v. City of St. Louis*, 10 Ill. 351, a bill was brought by the State to restrain the defendant from destroying the navigation of the eastern channel of the Mississippi River. The court entered a decree granting a permanent injunction, using the following language, on page 375:

"It can not, however, be denied that the State, as such, has a right to insist that one of the navigable channels of this river, lying entirely within its own borders, and which is a part of the public highway, shall not be destroyed without her consent. The legislature is the proper department to judge what the interests of the State require, or may permit, and it is there, and not to the courts, that appeal must be made for the sanction of or permission to erect these works."

In the *City of Chicago v. Law*, 144 Ill. 569, the power of the city of Chicago acting under the authority given in its charter to improve the south branch of

the Chicago River was brought into question. The court decided that Congress had taken jurisdiction over the river and that, therefore, the city had no longer any power to act. In the course of its opinion the court said, at page 580:

"Had Congress taken no action on the subject, the city of Chicago would have had the undoubted right to make such improvement in the river in aid of navigation as in its judgment was required; but after Congress had passed a law on the subject, and thus assumed jurisdiction over the subject, we think the city of Chicago could only act in conformity to the act of Congress, and as the act of Congress made it unlawful for the city to make the improvement until the plan of the work was submitted to and approved by the Secretary of War, the city had no power to make the improvement."

In *People v. Metropolitan Railway Co.*, 285 Ill. 246, a bill was brought on behalf of the People of the State of Illinois *v. Metropolitan West Side Railway Co.*, alleging that the defendant had built certain obstructions to navigation in the south branch of the Chicago River. The court reversed the decree rendered below with directions to grant the relief prayed for in the bill. In the course of its opinion the court said, on pages 256 and 257:

"Unless the right of the State over navigable streams wholly within the State, which had existed and was universally recognized by all courts prior to the passage of the act of Congress of September 19, 1890 (ch. 907, 26 Stat. 428), was destroyed by that act and exclusive jurisdiction vested in the Federal Government, the court erred in sustaining the appellees' exception to the finding and report of the master that the United States had not assumed exclusive jurisdiction of navigation on the south branch of the Chicago River, but that such jurisdiction was concurrent with that of the State of Illinois and its duly authorized agent, the city of Chicago. In *Lake Shore & Michigan Southern Railway Co. v. Ohio*, 165 U. S. 365, 17 Sup. Ct. 357, 41 L. Ed. 747, an action was begun by the State of Ohio to compel the railroad company to remove or alter a bridge constructed by the company over a navigable stream wholly within the State, on the ground that it was a public nuisance, impeding the navigation of the river. It was contended by the railroad company that jurisdiction to exercise that power was taken away from the State by the act of Congress of September 19, 1890, and exclusive jurisdiction vested in the Federal Government. This contention was not sustained, the court holding that it was not the purpose of the act of 1890 to deprive the State of authority it previously had the right to exercise, but was intended to provide an additional and cumulative remedy. The only difference we can see between that case and the one here under consideration is that the plan and character of the bridge built by the Lake Shore Co. do not appear to have been approved by the State, but the bridge was built without an adequate draw span, and in such manner that it was an obstruction to navigation; while in this case the bridge was constructed by the consent of the city of Chicago, representing the State, such consent being manifested by ordinance, according to plans approved by the commissioner of public works of the city of Chicago and by the Secretary of War. In other words, the bridge in the Lake Shore case was unlawfully constructed in the first instance and was an unlawful structure. In this case a bridge was constructed in a manner permitted by the lawful authorities, and was a lawful structure when built, and not then an unreasonable obstruction to navigation, but it is claimed it has since become an unreasonable obstruction. If the act of 1890 did not affect the power of the State to require the removal of an obstruction placed in the stream unlawfully, we do not see how it could affect the authority of the State to require the removal of a structure lawfully placed in a navigable stream, but which has since, because of changed conditions, become an unreasonable obstruction. The subsequent amendatory acts of Congress, including section 18 of the act of March 3, 1899 (ch. 425, 30 Stat. 1153, U. S. Comp. St. 1916, sec. 9970), do not restrict or encroach upon the power the State had, previous to those enactments, been authorized to exercise. The conceding Congress has the power to take sole and exclusive jurisdiction over navigable waters wholly within a State, it has not done so."

The foregoing authorities make it clear—

1. That the State may act together with the Federal Government in improving the navigability of its streams; or
2. That where Congress does not exercise this right of jurisdiction the State may either (a) improve navigation on its streams or (b) wholly destroy it.

WAR DEPARTMENT,
UNITED STATES ENGINEER OFFICE,
Chicago, Ill., February 18, 1918.

From: District engineer.

To: The Chief of Engineers, United States Army, Washington, D. C.
(Through Division Engineer, Northwestern Division, Rock Island, Ill.)
Subject: Bubbly Creek, Chicago River, Ill.

1. There is inclosed herewith, in duplicate, a petition prepared by the attorneys for the Sanitary District of Chicago, and addressed to the Secretary of War, requesting a "ruling from the War Department as to its right to fill in the west arm of the south fork of the south branch of the Chicago River between the points stated, conditional upon its obtaining the consent of the municipal authorities of the city of Chicago and the State of Illinois and acquiring the title to the land affected." Attached to the petition is a plan showing the location of the proposed fill.

2. While this paper was not specifically addressed through this office it is believed that some preliminary consideration is proper, with a view to saving of time.

3. The portion of the west arm west of Ashland Avenue has been filled by the sanitary district, upon the assurance of the Secretary of War that the War Department would interpose no objection (E. D. 98313). In that case all parties in interest agreed to the proposed fill. The evidence at that time indicated that the portion to be filled (west of Ashland Avenue) was not and had not been for many years used for navigation; that the dimensions of the original creek were so limited that it could not have been considered navigable; that no permits were ever issued for the filling up of the old creek, and no objections to such filling were ever made; that the creek was never meandered nor surveyed by Federal agencies; that the waterway was created artificially, for the most part by riparian owners or lessees, and in no part by the United States; and that the Federal project for the improvement of Chicago River, including the west arm of the south fork of the south branch ends about 1,800 feet below (easterly of) Ashland Avenue.

4. The portion of the west arm now at issue is adjacent to and in continuation about 1,300 feet easterly of the part already filled. The conditions in the former case apply equally to this case, except that in this case the abutting interests do not agree to the filling, and that the Federal project ends about 500 feet below (easterly of) the easterly limit of the proposed fill.

5. Whether or not the United States has jurisdiction over this artificially-made channel depends upon whether it is navigable water of the United States within the meaning of the statutes. In this connection I quote from an opinion of the Judge Advocate General given to the Chief of Engineers May 9, 1916, with reference to certain artificial waterways in the delta of the Sacramento and San Joaquin Rivers, Calif.:

"I have to conclude that any artificial connection made between different portions of the same navigable waterways of the United States or between two or more such waterways of such navigable capacity as to form with the natural navigable waterways thus connected a continuous highway over which interstate or foreign commerce is or may be carried on, is, by reason of its very nature and connections, notwithstanding private ownership therein and in the absence of Federal authoritative declaration to the contrary, a navigable water of the United States, and as such entitled to the protection of the laws of Congress."

This opinion would seem to indicate that such waters as the one in question (which is a *cul de sac*) not acting as a connection to form a continuous highway over which interstate or foreign commerce is or may be carried on, might not be considered as navigable waters of the United States and as such entitled to the protection of the laws of Congress. The same conclusion might be drawn from the action of the War Department in the former case noted in paragraph 3. Its present navigability in fact, however, is not questioned, and it may act as a feeder to such a continuous highway through its actual connection therewith.

6. Inasmuch as this water has been considered by the abutting owners in good faith as a valuable asset and as an outlet from their land holdings, some of which have apparently no other outlet, it is recommended that the matter be subject of a public hearing, unless it be definitely decided that the United States has no jurisdiction.

C. S. RICE,
Colonel, Corps of Engineers.

[First indorsement.]

OFFICE DIVISION ENGINEER,
NORTHWESTERN DIVISION,
Rock Island, Ill., February 19, 1918.

To: The Chief of Engineers, United States Army.

1. Forwarded, concurring in the views and recommendation of the district engineer as expressed in paragraph and above.

A. MacKENZIE,
Major General, United States Army, Retired.

[Second indorsement.]

OFFICE CHIEF OF ENGINEERS,
March 9, 1918.

To: The District Engineer, Chicago, Ill.

1. Returned.

2. In view of the fact that opposition has developed against the proposed filling, the district engineer is authorized to hold a public hearing on the application after due notice to the parties concerned.

By order of the acting chief of engineers.

J. C. MAHAFFEY,
Major, Corps of Engineers.

STATEMENT OF MR. C. F. WIEHE, SECRETARY EDWARD HINES
LUMBER CO., CHICAGO, ILL.

Mr. BLACK. Mr. Wiehe, you are also president of the West Park Board, of Chicago?

Mr. WIEHE. Yes, sir.

Mr. BLACK. And do you hold any position on the waterways commission of the Chicago Association of Commerce?

Mr. WIEHE. I am a member of the waterways committee of the manufacturers' association.

Mr. BLACK. Of the Illinois Manufacturers' Association?

Mr. WIEHE. And also of the lumber exchange.

Mr. BLACK. Are you familiar with this territory in the neighborhood of Thirty-ninth Street and Ashland Avenue?

Mr. WIEHE. I am.

Mr. BLACK. And with the proposed closing of the South Branch of the Chicago River of the Chicago River to enable the construction of Pershing Road?

Mr. WIEHE. I am.

Mr. BLACK. Mr. Wiehe, have you made any study of that matter with respect to the effect of the closing of this upon the navigation and transportation in Chicago?

Mr. WIEHE. I do not think it will affect it at all. I would not consider it a navigable stream at all.

Mr. BLACK. Mr. Wiehe, what is the opinion of the Illinois Manufacturers' Association, of which you are a member, on this proposition? Is it favorable or unfavorable to the closing?

Mr. WIEHE. I do not know what their attitude is on this particular part of the river, but on the West Fork, I believe they advocate the closing of it, and I think this is practically in the same situation.

Mr. BLACK. They are in favor of the Pershing Road plan?

Mr. WIEHE. Yes, sir; as I understand it.

Mr. GRAHAM. In order to avoid the necessity of bringing you back again or having you repeat your testimony, you know the part of the river that is included within the bills introduced by Senator McCormick and Congressman Michaelson on the West Branch of the river north of the sanitary canal?

Mr. WIEHE. I know that part of the river; yes, sir.

Mr. GRAHAM. Is your association in favor of the plan suggested by the bills to declare that portion of the river nonnavigable?

Mr. WIEHE. We have advocated the closing of the West Fork, west of the collateral channel, but leaving it open from the South Branch around to the collateral channel.

Mr. GRAHAM. In order to make a loop there?

Mr. WIEHE. In order to make a loop there. I do not know that it is vitally beneficial to navigate, because there is no navigation to speak of on the river. Down in this section—I do not think there has been a boat down there in a year or two. It is absolutely of no use for navigation, and it ought to be filled up for commercial purposes. If there is no navigation, why should it be filled up? We have heard for 10 years about the bugaboo of getting a deep waterway, but we do not get the deep waterway.

Mr. GRAHAM. Is it your judgment that the deep-waterway project is all "bunk" and that we are not going to get it?

Mr. WIEHE. Well, I don't say we are not going to get it if we live long enough, but it seems to be "bunk" up to this time. They tell us, "Why not wait and keep these channels for future use for terminals?" You have terminals enough here for the next 100 years without taking a cesspool like this and using it for a terminal. The State itself has the Illinois & Michigan Canal, which they are permitting to be filled up. Why don't they keep it open for a terminal? They have had that channel for a great many years, and they have permitted it to be filled up, and now they keep talking about wanting more terminals or channels for terminals when their own property is filled up.

Mr. DENISON. I can see the difference between that parallel channel of the old Illinois & Michigan Canal being used for terminals on the Chicago River, and a branch of the Chicago River inside of the industrial district of the city. It seems to me that there is a distinction there, or at least that is the way it looks to me.

Mr. WIEHE. Where that canal runs in and terminates you have a pretty live industrial situation.

Mr. DENISON. If this deep-waterway project does come about, there is going to be a whole lot of time ahead of us, you know.

Mr. WIEHE. And we have 32 miles on the sanitary canal for terminals.

Mr. DENISON. On the sanitary canal?

Mr. WIEHE. Yes; 32 miles from Chicago to Lockport. Since the canal has been constructed that has been the home of the bumblebee. There is not an industry on the canal, so that all this stuff about terminals is rot. Terminals all here and are not used.

Mr. DENISON. Of course, there is no transportation now up the Chicago River to amount to anything.

Mr. WIEHE. We are interested in a barge line that runs from Peoria down. We hauled a lot of automobiles from Peoria to East St. Louis. We must run overland from Utica to Lockport. You know that can not be done with a steamboat. We can not get through there. The Government spent \$250,000 cleaning out that wooden trough that is not big enough to really run a yawl boat through. The money was just thrown away.

Mr. DENISON. Where is that?

Mr. WIEHE. I think between Utica and Lockport. That is a small part of the Illinois & Michigan Canal.

Mr. DENISON. You are familiar with the deep waterway project for which the State has agreed to spend \$20,000,000?

Mr. WIEHE. I am; yes, sir.

Mr. DENISON. Do you think this will materialize?

Mr. WIEHE. Well, that depends on the Governor of the State of Illinois—how active he gets. We have tried to urge him and we have urged Mr. Lowden, but it was only by the most rigid kind of a campaign that we got the Marseilles Locks started, and that is just about being completed now. We have lost a couple of years by not going on with the locks and dam projects.

Mr. DENISON. Of course, we have been going through a rather abnormal period for the last few years, during the war and since the war, but now if this deep waterway project connecting the Gulf and lake, through the Illinois and Des Plaines Rivers, does materialize and become a great waterway system, as they say, of course, there will be need for terminal facilities and for storage facilities to take care of barge transportation, etc., here in the industrial district of Chicago.

Mr. WIEHE. There is no question about that.

Mr. DENISON. Is it your judgment there will be ample facilities without this branch of the river at all?

Mr. WIEHE. Yes; I think you have facilities enough here to do all the business in the world.

Mr. DENISON. Then, according to your judgment I assume that this stub of the river ought to be filled up and closed, of course, the same argument would

apply to the next block down below because you would have a stub end there just the same.

Mr. WIEHE. Yes; it should be closed or filled in to the main river. There is no navigation there. My opinion is that the waterway proposition is getting to be a good deal of a joke. We do not seem to get anywhere with it. Whether you fill up this little arm here or not I do not think cuts any material difference so far as terminals are concerned. As I say, you have got 32 miles now from Lockport to Chicago with terminals tapped by all the trunk lines in the city, which would make one of the finest terminals in the world. You also have the main river and slips throughout the city. I think that is adequate to take care of all the business you will have here in the next 100 years.

Mr. DENISON. It is your judgment then that those same reasons that apply to this part of the river here [indicating] should also apply to the part down here [indicating]?

Mr. WIEHE. I think all that ought to be closed up to the main river. I do not think it is of any value for terminals.

Mr. DENISON. Of course, that is the logic of your position.

Mr. WIEHE. I do not think it is a particle of good for navigation.

Mr. DENISON. That is all, thank you, Mr. Wiehe.

STATEMENT OF MR. JAMES H. VAN VLISINGEN, CHICAGO, ILL.

Mr. BLACK. Mr. Van Vlissingen, you are a real estate operator in the city of Chicago?

Mr. VAN VLISINGEN. Yes, sir.

Mr. BLACK. And have been here for how many years?

Mr. VAN VLISINGEN. I have been continuously in the real estate business since 1875.

Mr. BLACK. And have you made a study particularly of the industrial conditions and transportation conditions as affecting industries in the city of Chicago?

Mr. VAN VLISINGEN. I have. I specialize in business property, switch-track property, and dock property.

Mr. BLACK. Particularly with reference to this territory at the south branch of the South Branch of the Chicago River at Ashland Avenue and Thirty-ninth Street, have you made such a study?

Mr. VAN VLISINGEN. I have made a study regarding it, but not particularly so, in so much as my familiarity extends over the entire Chicago River.

Mr. BLACK. How long have you known that particular part of the river?

Mr. VAN VLISINGEN. Since I first came to Chicago, in 1872.

Mr. BLACK. Please state to the committee, Mr. Van Vlissingen, whether you favor the passage of this bill which is now under consideration or whether you are opposed to it, and give your reasons.

Mr. VAN VLISINGEN. I favor the passage of the bill as an important and necessary requirement in connection with the development of that portion of Chicago, through the construction of the Thirty-ninth Street thoroughfare—Pershing Road—and the doing away with the construction of an expensive bridge, the sole purpose of which would be to leave navigable, in such degree as it is now, a very short piece of a branch of the Chicago River.

Mr. BLACK. If it is rendered nonnavigable, will it affect in any way, in your judgment, the terminal proposition with reference to the navigable water in Chicago?

Mr. VAN VLISINGEN. No, sir. The terminal proposition with reference to the navigable water at Chicago is a very large one, by the side of which the subject matter of this hearing is of the least possible significance. As viewed from the standpoint of the commerce and transportation of the United States, Chicago is that territory along the south end of Lake Michigan extending from Evanston, in Illinois, on the north to Gary, in Indiana, on the south and east.

In transportation parlance this territory is known as the Chicago switching district, throughout which the freight rate to and from all points outside of said switching district is the Chicago rate.

This territory is that part of the United States at the south end of Lake Michigan where the East meets the West and the North the South.

Here trunk-line railroads terminate, besides 25 belt lines and numerous lesser belts that are usually designated as industrial lines.

Within this territory for present and future terminal opportunities by water and for the interchange of freight between water and rail there are the Chicago Harbor and the Chicago River and its branches and slips, the Calumet Harbor and River, with almost endless possibilities for extension, Lake Calumet, the sanitary canal and its branches, and also Indiana Harbor, with its branches; besides all of these, Wolf Lake, with its projected United States developed, named "Illiana," because located upon both sides of the Illinois-Indiana State line.

Considered from the standpoint of the Chicago River alone, the terminal proposition with reference to navigable water, stands like this: Before any recent filling was done, and only a little has been done, the Chicago River and its branches and slips had a frontage of 44 miles and in the palmiest days of the river all of this maximum was never required or used.

As has been testified here, the production of brick for the upbuilding of Chicago went hand-in-hand with the digging of clay for widening and deepening the river and its branches, and for the creation of the numerous slips.

At one time, of course, Chicago in a commercial sense consisted only of the very limited area at the mouth of the Chicago River. Since that time, what was, in that same sense a very small and insignificant river, has been enlarged, widened, deepened and extended to afford, as stated, dock frontage of 44 miles.

In the days of this extension of the Chicago River our commerce in lumber was enormous. The lumber produced in Michigan was carried to Chicago by a large fleet of schooners and small steamers and from docks along the Chicago River distributed by rail to the Western States, like Kansas, Iowa, Nebraska and others, and was largely used in the development and upbuilding of those States. This was in the days before the introduction of barbed wire and woven wire, and in the prairie States even the farm fences of that time were built of lumber.

With the exhaustion of the lumber supply in Michigan values of dock property along the Chicago River began to decline, and from where we had a slight excess in supply of dock frontage the demand has lessened until now not 10 per cent of the dock frontage is in use for purposes having to do with water transportation of any kind.

The lumber produced west of Lake Michigan is distributed by rail direct from the mills, and at Chicago only enough lumber is received (chiefly by rail) to supply the local demand, including a limited territory surrounding the city.

In this way lumber is piled at the mills on inexpensive land, where no city taxes on same have to be paid and from where distribution by rail direct to the country is made with less handling than is the case where loading to and from boats is involved.

Along with this tremendous change in the operating of the lumber business at Chicago there has come a similar change in the transshipment of coal.

The time was when most of the hard coal consumed in the States west of Chicago and considerable of the steam coal was delivered by boats to docks along the Chicago River and distributed from here by rail. Heavier rails, stronger bridges, better roadbeds, larger cars, and bigger engines have made it possible to ship all the way by rail from the mines to destinations, so that also this part of the traffic upon the Chicago River has fallen to practically nil.

In considering the Chicago River from the standpoint of its importance to the commerce of the United States it is necessary also to note a change that has come locally since the early days, when the opening of the bridges was little objectionable to the limited population of that time.

With the present large population of Chicago the opening of bridges is a nuisance, and it is fortunate that with the growth of the city additional and for the larger craft more suitable facilities for terminal purposes on water have become available.

The annexation of the village of Hyde Park to Chicago extended the latter's boundary line southward to the Illinois and Indiana State line, thus including within the city limits the Calumet Harbor, Lake Calumet, and also a considerable portion of the Calumet River.

The United States Government on more than one occasion has made large appropriations for the protection of this harbor and for the straightening, widening, and deepening of the Calumet River; and here has grown up and developed a large harbor system.

As part of the industry and commerce of the Nation, a service is being performed on the Calumet River for which the Chicago River is unsuitable because

of too much congestion, resulting from numerous bridges and because of too short reaches between bridges and because the large areas are not available upon which to carry on the large industrial and transportation activities that now call for water transportation.

Through the deepening of the channels connecting the Great Lakes, completed twenty-odd years ago, the United States has made possible the use of large steamers for which there is not room to navigate economically upon the Chicago River.

Mr. DENISON, I think that is very apparent; but the further question comes up as to the class of craft, barges, etc., that will have to use the Chicago River. If this deeper waterway project is ever realized, What is your judgment about that?

Mr. VAN VLISSINGEN, My judgment regarding that is this: Commerce will grow with population, and with progress in the arts and invention. The new things that we use and that become necessities, such as automobiles, radio, and whatever else that is useful that we invent, make for increase in commerce.

On the other hand, commerce does not increase per se because of the creation of additional facilities for transportation, nor because of the creation of terminal facilities at which commerce might be handled, if it only could be created.

Chicago, in the large and broad sense in which I have used the name, is abundantly provided with terminal facilities for an indefinite period of time with facilities for the handling of tonnage of all kinds coming from or destined to all destinations; and it must and will in the future suitably provide for expansion in facilities, as has been done in the past, and for that purpose there probably is not in the world another area or territory of similar size so generously supplied with opportunity as here.

When I think of the future use of the Chicago River, I think of it as being limited to the barges and other craft that can pass under the bridges so that in time our bridges will be fixed bridges; the present bridges, if you please, left without men to operate them.

In this way I think of the Chicago River as a waterway more particularly concerned with that is consumed or produced within the city itself, and not so much as a terminal for water transportation between different parts of the United States, except such commerce as can be handled to advantage by barges and other shallow-draft boats.

The large commerce must be handled away from the congested center out in the open or in the suburbs where water frontages are not broken up so much and where the large ships may navigate with dispatch and without undue expense.

Here land is available in large units and cheap enough to permit of the locating of large enterprises, and where incidentally streets crossing the river, and therefore bridges, are few in number.

We have these conditions along the Calumet River, and then we have Calumet Lake, which is capable of being made the scene of direct transfer between large boats as is done so much in Europe, where a large part of the traffic and commerce is not handled by an intermediate delivery to shore.

Mr. DENISON, Is there a connection between Calumet Lake and the Drainage Canal?

Mr. VAN VLISSINGEN, There is or will be for small boats when work is completed; also I look forward to an outside connection between the mouth of the Chicago River and the Calumet River by the construction of an additional breakwater, so that you can see that I attach importance to the small craft.

By reason of such protection, small craft from either harbor will be able to reach the other without the exposure to storms that now exists. Also in this way a large protected basin will be formed where ocean-going or other large boats can directly interchange freight with barges, lighters, etc.

In addition to that, of course, we have the Wolf Lake situation immediately upon the State line between Indiana and Illinois.

If you will permit a digression, I may say as a matter of interest in this connection that unless the decisions, the title to the bottoms of lakes is held differently in different States, so that where the State line passes through Wolf Lake on the Illinois side the title to the bottom of the lake belongs to the State of Illinois, and on the Indiana side of the lake the title goes to the adjoining property owners.

Mr. DENISON. I thought it was just the other way. You say that in Illinois such titles belong to the State. Is that right?

Mr. VAN VLISINGEN. Yes; in the bottom of the lake; and, as already stated, we have at South Chicago what we call the Calumet Harbor and River; at East Chicago the Indiana Harbor; and a smaller harbor at Gary that serves the United States Steel Corporation.

Now, viewed in this broader way, a little stretch of water like what is under consideration here ceases to have any importance when it comes to a discussion of the terminal facilities of the commerce of the United States committing that Congress should concern itself with and does concern itself with.

Mr. DENISON. You think, then, that if the Illinois deeper waterway plan on the Illinois and Des Plaines Rivers, connecting the Lake with the Gulf, is finally developed and a barge system of transportation developed that there will be ample facilities for terminals, storage warehouses, etc., without this branch of the river at all.

Mr. VAN VLISINGEN. Well, sir, if Providence has created any place in the world where that would be the case, we have got it right here in the territory I have described.

Mr. DENISON. I believe that is all, Mr. Van Vlissingen. We are much obliged to you.

Mr. BLACK, Mr. Chairman, may I say that Mr. Dana, who is president of the Oakland Business Men's Association, Mr. Jamme, who is vice president of the Clearing Land Association, and Colonel Anderson, of the Association of Commerce, are prepared to testify, if the committee cares to hear them, in corroboration simply of what has been already stated.

Mr. GRAHAM. I think perhaps the subcommittee has gone far enough on this matter and this will conclude the hearings on this branch of the subject.

SUBCOMMITTEE OF THE COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE,
HOUSE OF REPRESENTATIVES,
CHICAGO, ILL., Saturday October 7, 1922.

The subcommittee this day met.

Present: Mr. Denison and Mr. Graham.

Mr. GRAHAM. We will next take up S. 3177, declaring a portion of the west fork of the South Branch of the Chicago River, Cook County, Ill., to be a non-navigable stream. Mr. Eaton, will you appear on behalf of the proponents of the bill?

Mr. EATON. Yes.

STATEMENT OF MR. CHARLES S. EATON, ALDERMAN FROM THE SIXTH WARD AND CHAIRMAN OF THE COMMITTEE ON EFFICIENCY AND ECONOMY, CITY COUNCIL OF CHICAGO.

Mr. EATON. On behalf of the city of Chicago, we were directed to give our attention to this matter by resolution which was passed unanimously by the city council, December 14, 1921, and which reads:

"FILLING IN THE WEST FORK OF THE SOUTH BRANCH OF THE CHICAGO RIVER.

[Resolution passed December 14, 1921 (Council proceedings, p. 1483).]

"Whereas there is, within the limits of the city of Chicago, a stream of water known as the west fork of the South Branch of the Chicago River, lying approximately parallel to the Chicago Drainage Canal and between Hoyne Avenue and Kenton Avenue of that city; and

"Whereas this stream serves no other purpose at the present time than to carry the sewage which is emptied into it to the Chicago Drainage Canal, and on account of the low velocity of the water it becomes stagnant and is a menace to health; and

"Whereas the city of Chicago has built five bridges over this stream during the past six years at a cost of approximately \$155,000 and will be called upon in the future, as development takes place in this vicinity, to build five additional bridges which will cost about \$200,000 and be further subjected to considerable annual maintenance expense; and

"Whereas this stream is not navigable and divides property belonging to private individuals and corporations, thereby hindering the development and necessitating the expensive construction and maintenance of railway bridges, and constitutes a general nuisance and menace to the neighborhood; Therefore be it

"Resolved, That the commissioner of public works be, and he is hereby, directed to prepare the necessary plans and estimates of the cost of taking care of sewage and drainage now provided for by the west fork of the South Branch of the Chicago River, with a view to filling this channel and to secure the necessary frontage consents of owners of property abutting on same; and be it

"Further resolved, That a copy of this resolution be sent to the Congressmen representing the several congressional districts within the city of Chicago and to the two United States Senators representing the State of Illinois in Congress for the purpose of soliciting their cooperation in the framing and passage of any legislation by Congress which may be necessary to enable the city of Chicago to fill either all or a part of this channel; and be it

"Further resolved, That the committee on efficiency, economy, and rehabilitation, and the committee on judiciary of the city council be directed to take such steps as may be necessary to accomplish the purpose of this resolution."

With the passage of that resolution, the committee on efficiency, economy, and rehabilitation, of the city council, as directed, undertook an investigation of this channel of the river with a view to carrying out the purposes of the resolution and also studying it from the public or civic point of view.

The committee on efficiency, economy, and rehabilitation is composed of Alderman John A. Richert, chairman of the finance committee; Alderman Oscar H. Olsen, chairman of the judiciary committee; Aldermen Leo C. Klein, Walter P. Steffen, E. I. Frankhauser, Thomas R. Caspers, Benjamin S. Wilson, John P. Garner, John S. Clark, and myself as chairman.

We called in the Chicago Plan Commission officials, Mr. Bennett and Lieutenant Young, of their technical staff, and Mr. Taylor, secretary of the commission, and laid before them the resolution and the plan for making some useful use of this branch of the river. They immediately set their technicians to work. We set the various departments of the city government having to do with it to work to furnish data and to gather materials. The map which you see stretched out before you, and of which we are glad to furnish you a copy, and also photographic reproductions thereof, was produced from our sewer department, which has had most to do with this project, and also through the city engineer department. Then as this matter progressed we had the law looked up.

We have had a special corporation counsel assigned to us, who is here, and who will be ready to answer any questions on the legality of the matter that you may care to propound to him. We also found that perhaps the sanitary board might have some indirect interest here. They have no direct frontage on this fork but might be interested in the general question of sanitation and of transportation, and so we have called them in from time to time and found they had no interest in the matter. One other governmental body in this territory has to maintain a bridge over this fork and that is the West Park Board, of which Mr. Wiehe, who was here this morning, is president, and of course they are interested in having the possibility of other bridges eliminated. So that it appeared from the deliberations of our committee and its consideration of the matter that the question was one involving the purses of the public, in that they would have to be called upon from time to time to build expensive bridges over this branch; that it was a question of sanitation, and that it was a question of the development of this territory in which, not at all from the private owner's point of view, but from the general public's point of view, the city of Chicago was interested. In other words, we felt that not alone the municipal government but the State and the county and the National Government were interested in seeing that territory thrive and develop, because if industries could locate there it would make tangible property for assessment for taxation purposes from the municipal government point of view and from the State and county and national point of view.

As it is now, this small strip of land is traversed by the Sanitary Canal and by this west fork of the South Branch of the Chicago River and the old I. & M. Canal all of which flow in different directions and is like a dead arrow thrust right into the heart of the city clear up to Robey Street, and is filled with mud and scarcely developed at all, and just lying there, a cancer and

an absciss to the development of the territory lying immediately south and to the north of it. If you will look at the map—and as you saw the territory yourselves—you will see that both on the north and the south side of this arrow shape piece of land driven into the heart of the city, it is becoming densely populated and as time goes on it will become very densely populated. Those people constantly are clamoring before the various committees of the city council demanding north and south access across this territory. As it is now, it stands in the way of all street car transportation and of all other transportation. Furthermore, the territory has no east and west connection within itself. The only possible way of really seeing what is in this territory is by going around on the five or six bridges we have and looking up and down it.

So that it is from that point of view a territory that should receive the attention, not alone of our Government, but of all the governing bodies which have control of it. The matter then progressed, as you know, until we came on a visit to you at Washington to lay this project before you, with the hope of eliciting your interest in the matter, and of inviting you out here to see it, if that was necessary.

Now, to come down a little more closely to the project, that in general being the general situation. The west fork idea is not a new one in our local development. In the years that have preceded this, especially from 1909 back, there have been numerous projects suggested for this west fork. I had in looking through the records of Congress that there have been some five or six congressional committees out here to look into the question of what should be done with the west fork of the Chicago River. The original projects, as presented to Congress, have always been that Congress should set aside a large sum of money and dredge this west fork to a width of 175 feet to 200 feet and that they should dredge it to a depth of from 21 to 22 feet. On all of those requests the Federal engineers have finally unanimously reported adversely. I have in my hand here a letter from the Secretary of War transmitting a letter from the Chief of Engineers, making a report of an examination of the west fork of the South Branch of the Chicago River and the conclusion of that report, which was made by W. L. Fiske, colonel, Corps of Engineers, are: "I am therefore of the opinion that the west fork of the South Branch of the Chicago River is not worthy of improvement by the United States." (H. Doc. No. 932, p. 9, 61st Cong., 2d sess.)

Mr. GRAHAM. Dated when?

Mr. EATON, June 12, 1909. That report of the division engineer was concurred in by D. W. Lockwood, colonel, Corps of Engineers, senior member of the board, in the following language:

"In view of the above, the board concurs with the district officer and the division engineer in the opinion that the west fork of the South Branch of the Chicago River from the mouth of Sacramento Avenue or from Western Avenue to Sacramento Avenue is not worthy of improvement by the United States." (H. Doc. No. 392, p. 10, 61st Cong., 2d sess.)

So, then, you are confronted with the situation that while there have been projects for the development of this west fork, which had they not run into engineering problems and questions of the expenditure of enormous sums of public money, might have been a solution, until now you have reached a situation where the Federal Government will not do that, and then the question is what next to do with it. So that the situation immediately confronting the city of Chicago is to suggest some method of treatment of this stream of water. The question as to whether the Federal officers were right in refusing to develop this stream I believe is amply demonstrated, and the wisdom of their judgment proven by the progress of the last eleven or twelve years since this report was made. For the report shows that at the time it was made there was some 8 or 9 feet of water in there, whereas at the present time there can not be more than about 2 feet of water in its deepest portions. The stream is constantly silting up and will probably silt up entirely except for just a few inches of surface water there. Practically the only water in there comes from the sewers emptying into it.

Mr. GRAHAM. Was there ever any navigation on it?

Mr. EATON. Since 1911, apparently not. We have our harbor master here, and he says that the last attempt was made by the Kimball Manufacturing Co. to bring up two scows, and that the officer on the boat stated to him at that time that if he ever once got out of there they would never catch him in there

again. Reference is also made to this last attempt to navigate this fork in the letter of the International Harvester Co. (H. Doc. 392, p. 7, 61st Cong., 2d sess.)

Mr. GRAHAM. Where was he going?

Mr. EATON. To the Kimball plant, which is a little farther up the fork and adjoins the International Harvester holdings on the west.

Mr. GRAHAM. That is east of the collateral channel.

Mr. EATON. Yes; that is all east. The International Harvester Co., as we showed you yesterday, own all of this land at the mouth; they also owned even in 1909. They own about four-sevenths of that frontage at the mouth of this fork. Here is an excerpt from their letter in the printed record before the Sixty-first Congress, second session, Document 392, House of Representatives, middle of page 7: At first they point out that they have tried to use this stream and that they have spent of their own money trying to dredge and maintain a channel there the sums of \$625, \$1,162, and \$3,489.48. Then they say: "On the other hand, we feel that the closing of the west fork from the mouth to a point at or near the east line of the Kimball Plant Co.—they were at that time the people who were wanting it maintained—will be of decided public benefit and a saving of public expense to the public treasury and also to the property owners along the banks."

At the time this was going on the city of Chicago took no action in this matter. They were quiescent. The International Harvester Co. were opposed to improving it. We owned the Bridewell property at that time, but our officials at that time were not alert to the situation. Since that time we have also acquired the Maxwell property, also mentioned in the congressional report. Our eyes have now been opened to the situation. We now heartily join with the other people and with the International Harvester Co. in desiring to have the west fork cleared nonnavigable, and together we represent over 90 per cent of that frontage from the mouth to the collateral channel.

Mr. GRAHAM. What is your position now? This bill only applies to that portion up to the collateral channel. What is your attitude about that?

Mr. EATON. Our petition to you is that you amend the present bill so that it will read from the west line of Canal E. As your bill now reads, it runs from the collateral channel west. We would have it take in the portion up to Canal E. In other words, all of this portion here [indicating on map] is International Harvester Co. and all of this is the city of Chicago, which is practically all of that frontage.

Mr. GRAHAM. What about that loop there? Does not that get some circulation there?

Mr. EATON. There is some circulation there. I understand there is somebody here representing the Barrett Manufacturing Co. and that they might have some interest in maintaining a little slip there. From our point of view—that is, from the city's point of view—we have no fixed plan for this territory except to develop it. When the Chicago Plan Commission became interested in this matter they pointed out to us that Blue Island Avenue, which in the original charter of the city of Chicago was to be one of the great diagonal streets of Chicago, stopped abruptly at Twenty-sixth Street, and they pointed out that the line of Blue Island Avenue projected, almost coincided with this stream, and that here was presented a possibility of an enormous public benefit through a great diagonal artery in the form of a public highway clear out to Joliet and the Bellefontaine Highway, which would connect up the city of Chicago right to its heart with all of the great agricultural territory lying to the west and south. By means of this highway the very idea of the original I. & M. Canal would be carried out, and there would be access to the heart of the city in a method which is up to date; that is, by motor transportation, which is the newer method of transportation.

As far as the officials of the city of Chicago are concerned we believe it does present a great opportunity and that without expense to the people this highway can be established, because our theory is that if you abandon this as a navigable stream, that puts the power back into the State legislature, and we will then have to go to the State legislature and the State department of public works and arrange with them so that they will permit us to fill in this stream upon the proper protection of the public interests by the establishment of a great highway as suggested. As to its exact location, I understand that some of the private interests have been a little apprehensive. They fear we might

be arbitrary in the exact location of such a highway, and that in one or two instances it might divide their properties disadvantageously. The city has no such idea, but merely that we want such a highway, and that this new land would give us an opportunity to trade locations; that is, if it is better for them to have the land of the river bed in their plants, then if they will trade us enough to put us on the other side of it, that is all we would ask. So that it is clear that the plan as outlined does present a wonderful opportunity for the development of the city. And in conclusion I would like to say to the property owners who are here, that we want you to feel that it is from the city point of view that we are considering this matter, and that we have no arbitrary ideas as to the precise location of such a highway, but only that you should, by agreement with the State, make it possible to accomplish this purpose.

In general, gentlemen, that is an outline of the situation.

I may say that, following your directions, Mr. Chairman, I have had the secretary of the committee get in touch with our engineers and our real estate department to learn the names of all the property owners abutting on the West Fork and to write and notify them to be here.

Mr. GRAHAM. I imagine a good many of them are here.

Mr. EATON. I think so. The Harvester people were notified and the Peoples Gas & Light Co. are here, and the Barrett Co. people are here.

Mr. GRAHAM. If you say you notified the landowners and that you know that several of them are here and no one has appeared and made any opposition, it will be assumed by the committee that no one has any active opposition to the proposition, but at the same time the committee wants to be satisfied about these other interests that are involved. We want to hear from the sanitary district with a brief statement.

STATEMENT OF MR. FRANKLIN HESS, GENERAL ATTORNEY FOR THE INTERNATIONAL HARVESTER CO., CHICAGO, ILL.

Mr. HESS. I would like to say that our situation is a little bit different than it was at the time of the issuance of that letter. There has been quite a little development in the way of waterways and we have cooperated with that development, and I would like, if I may be permitted, at this time or at any other time, to read into the record a very short statement.

Mr. GRAHAM. Will it inconvenience you in any way to come back this afternoon for a short session? If not, we will let you do that at that time or if it is committed to writing, and you want to read it into the record now, you can do that.

Mr. HESS. It is just a page and a half and it may go right in in connection with my statement. I may say further that this plan as shown here, and the testimony of Mr. Taylor, indicates a proposition which was not presented to us before, and that is the extension of Blue Island Avenue down through our property.

Mr. EATON. Not through our property.

Mr. HESS. It does go through our property. It cuts through a public utility which is a subsidiary of the Harvester Co., the Illinois Northern Railroad, and we feel that would be so disadvantageous to the property that, in addition to what I have said in the memorandum, I would say further I would not believe we would, under that situation, consider at all the closing of the river if it was to be used to divide our property by a boulevard.

Mr. DENISON. You understand, of course, this committee is not concerned with what is going to be done in that respect.

Mr. HESS. I understand that, but inasmuch as this map shows that and one of the witnesses testified to that, I thought I should, in all fairness to everybody, make that statement.

Mr. GRAHAM. That is entirely proper.

Mr. TAYLOR. I think, though, Mr. Chairman, I should reiterate the fact that neither the plan commission nor the city of Chicago has made any recommendation whatsoever as to the location of that street, and there is no reason why you should predicate anything on the fact that there is to be an extension. Until that is definitely known, nobody can say whether it would go through your property or alongside of it.

Mr. GRAHAM. Do not let us get led off upon a collateral issue here. The thing this subcommittee wants to know and the only thing we want to know is whether anybody thinks this portion of the river ought to be retained for

purposes of navigation. That is all we want to know. What is your position on that?

Mr. HESS. If I may, I would like to just read this statement of a page and a half, as follows:

"CLOSING WEST FORK OF THE SOUTH BRANCH OF THE CHICAGO RIVER.

"It is difficult to say with finality that the International Harvester Co. favors or does not favor declaring the west fork of the river nonnavigable, without knowing definitely how the project is to be treated in detail, and it is impossible for anyone to state with exactness at this time what the detail will be, as necessarily the detail will result, in a large part, from the agreement of all the various interested parties—the city, the sanitary district, railroads, property owners, and the State itself, considering its very definite interest in waterways. I think it can be stated that all are agreeable to some treatment of the proposition which will result in better sanitation and a more healthful condition for the surrounding population. I also think it a reasonable statement to make that all are willing to cooperate to the end that all wasteful expense be eliminated in the matter of maintaining bridges, docks, etc.

"Twenty years ago the general verdict would have been that the best possible treatment would have been a complete closing of this west fork, proper provision having been made for sewage and other features affected by the closing. Since that time, however, quite a different situation has developed which suggests the possibility and wisdom of a very different treatment. I refer to the program which the State of Illinois has for the building of locks, deepening of the Illinois River, and the opening up of large navigation from Chicago to New Orleans, and to the already well developed effort of the United States Government in establishing barge service, particularly from New Orleans north. The International Harvester Co. has been one of the strong supporters of the work attempted by the United States Government in the development of a waterway barge service, and to that end has made every possible use of this barge service and is now the second largest shipper using the Government barge service to and from New Orleans.

"All of this is preliminary to a suggestion or a question in reference to the treatment of the west fork. Can the west fork be reduced in width, say from 100 to 80 feet, and then by proper dredging be maintained as a clear stream of only sufficient depth for the purpose of navigating barges? If this can be done without undue and extraordinary expense, it would be the program first favored, and most favored, by the Harvester Co. This would permit of the elimination of movable bridges, and reduce the span of bridges so materially as to eliminate a great waste of expense in construction and maintenance. With the increased cost of all material, as well as increased freight rates, which are often the largest item of cost, it is not only absolutely necessary, but entirely possible, to transport large quantities of coal, lumber, and other material, as well as manufactured articles, by water routes, rather than by rail. This would relieve the congestion of the railroads and result in a material saving to the consumer.

"The preference, therefore, of the International Harvester Co. is for a barge channel 70 to 80 feet wide, to be maintained at only a sufficient depth to make possible the navigation of barges. However, if it is to be considered a public improvement to close a portion of the river, and both public and private interests are united in furthering a project of this kind, the Harvester Co. would not wish to stand in the way of a public improvement, provided that that portion of the river, from its junction with the Sanitary Canal to Western Avenue, is kept open and maintained as a navigable waterway to a sufficient extent to serve the plant of the Harvester Co., and, provided, further, that the Harvester Co. is indemnified against any expense or assessments because of the closing of any portion of the river, or of any public improvements which may be deemed necessary as a result of such closing.

"The Harvester Co. has now a lease from the sanitary district of the land bordering the canal adjoining its plant. This lease expires in about 30 years. If the company can secure from the sanitary district an extension of its lease for an additional 50 years, this fact would make a very substantial difference in the position of the company relative to this proposed improvement."

Mr. GRAHAM. Let us see if we can get this down to an issue. Does anybody have any objection to closing that part of the river west of the collateral channel?

Mr. HESS. No, sir.

Mr. GRAHAM. You all understand that the Senate passed a bill closing only that part west of the collateral channel, and for the first time the proposition is now presented to the House committee with reference to this section east of the collateral channel, and that is the thing we want to hear from you more particularly about this afternoon.

Mr. EATON. I understand that east of Western Avenue is where you would like to have it maintained.

Mr. HESS. We would prefer, of course, a barge channel clear around to the collateral channel, but if everybody is united in opposing that, then we would be satisfied if it was maintained up to Western Avenue.

Mr. EATON. As far as the city is concerned, Western Avenue would be entirely satisfactory to us because that would make possible the treatment of Blue Island Avenue, which we are so very anxious to accomplish.

Mr. NANCE. If the committee please, I am here representing the Barrett Co., and I want to make a statement this afternoon.

Mr. GRAHAM. We will be glad to have a statement from you, and we will now stand in recess until 2 o'clock.

AFTER RECESS.

The subcommittee reassembled at the expiration of the recess.

Mr. GRAHAM. We will now proceed. Mr. Eaton, have you finished?

Mr. EATON. Yes, sir; I had finished. Were you wanting to hear from the objects?

Mr. GRAHAM. Have you any particular persons you desire be heard now?

Mr. EATON. We have Mr. Matthews here who drew the map and can tell you about that end of it, and Mr. Pihfeldt who can tell you about the expense of bridges and then Mr. Appell, our Assistant Corporation Counsel, who can give you his ideas on the legal end of it.

Mr. GRAHAM. Well, proceed with Mr. Matthews and let him make his statement.

STATEMENT OF MR. WILLIAM R. MATTHEWS, ENGINEER, BUREAU OF SEWERS, 409 CITY HALL, CHICAGO, ILL.

Mr. EATON. Mr. Matthews, will you tell the committee the general situation as to this stream, the depth of the stream, the number of bridges, location, etc.

Mr. MATTHEWS. This plan shows the West Fork of the South Branch of the Chicago River from Robey Street westerly to the city limits, and beyond, perhaps, to the Des Plaines River.

Mr. GRAHAM. How far is that?

Mr. MATTHEWS. To Harlem Avenue is about 7 miles from its junction with the main canal, about half of which is within the city limits. The stream is southwesterly and northwesterly and about 1,800 feet north of and parallel with the main drainage canal.

Mr. GRAHAM. Is 1,800 feet about the maximum distance?

Mr. MATTHEWS. One thousand eight hundred feet is about the average distance. It is a little less in places and a little more in others.

Mr. GRAHAM. How much of that distance is the so-called Ogden ditch?

Mr. MATTHEWS. That is very difficult to state. Historically, the natural stream would extend perhaps only to Western Avenue which would be about a half mile from the junction and the extreme end of the natural stream might be put at Kedzie Avenue, which is about 13 miles from this point.

Mr. GRAHAM. The point you refer to is Canal E?

Mr. MATTHEWS. Canal E, which is roughly Robey Street. Canal E lies but a few hundred feet from Robey Street. The stream itself varies somewhat in dimensions and in depth. There is a short section lying from Canal E to Western Avenue which is about 200 feet wide and is a docked stream. The balance is practically without docks, with sloping banks and ranging in width from perhaps 20 feet to a maximum of perhaps 60 to 100 feet. Its depth from about Crawford Avenue westerly is about 2 feet. East of that there are portions here and there which would be more than 3 feet. The average depth of the whole river would be perhaps less than 4 to 5 feet. There are some places along the stream where you might say there is no depth. The water ripples over heavy broken material such as bricks and the like, particularly in the vicinity of Fortieth Avenue and Forty-sixth Avenue. The stream is blocked by a number of trestles and bridges and the like. There are about 20 in number all told, of which but three may be said to be modern, and none of them suitable

for the passage of any sort of vessels, with the exception, perhaps, of one, which would pass a small flat boat. It is nonnavigable, in fact, because of the lack of water and because of the bridges that are there. It may be stated, too, that this depth is not measured below the plane of water in the drainage canal. The slope of the water in the river itself is greater, so that if the obstructions were taken out of the stream, the brick, etc., the water surface would sink still lower, so that it would barely show water in a good many sections.

Mr. EATON. In other words, the bed of the channel is higher than the bed of the sanitary canal, so that the natural drainage brings that down and would soon empty it.

Mr. MATTHEWS. That is right. The bed of the stream is approximately at about the same elevation as the elevation of the top of the water in the sanitary canal.

Mr. EATON. How about the sanitary conditions and the sewage situation?

Mr. MATTHEWS. There is no natural flow in this stream whatsoever, with the exception that it acts in its upper portion as a land drainage ditch for a very narrow strip. I would say not more than 500 to 1,000 feet in width. The amount of water that runs through might be put at perhaps 50 cubic feet per second or something like that. Outside of that, the flow is entirely sewage. The city of Chicago has some four very large trunk-line sewers and a number of small ones emptying into this stream, a sewer at Western Avenue 5 feet in diameter, one at Rockwell Street 10 feet in diameter, one at the Barrett plant at the mouth of the collateral channel 9 feet in diameter, and two 9-foot brick sewers, one at Fortieth or Crawford Avenue and the other at the line of Forty-fifth Avenue. All of this water that goes east in this stream to the collateral channel is sewage. The flow in the channel east of the collateral channel is generally from the east to the west, but this flow is seldom more than the discharge of the large sewer in Rockwell Street. It might be said that the whole bed of the river has 6 feet or more of sediment, always decomposing, passing gas and sludge, and as a result the water is black, has an offensive odor, and is generally a nuisance both to sight and to smell.

Mr. EATON. If this stream was closed, how about the sewers?

Mr. MATTHEWS. That represents no problem. These sewers should discharge to the sanitary district canal. They do not because of the necessity, if they were now extended, of carrying them beneath this system with very expensive siphons. If the stream be filled they may be carried directly to the canal and discharged into that stream. There would be no point in objecting to bringing the sewage to that channel because that is the purpose for which it was built and to which the sewage now reaches, only in a roundabout way.

Mr. EATON. As to the suggestion of leaving the channel from the west line of Canal E to Western Avenue open, is there any particular point in that?

Mr. MATTHEWS. I would say that the city's interest in closing this stream and the interest of the general public would be largely served if it were closed from the east line of Western Avenue, as proposed, westerly, but that the same would not be served if this closing was limited to the collateral channel and west. You would still have a section of a stream of no value for navigable purposes in its present condition, which would continue to receive the discharges of several sewers and would continue to be a nuisance. Likewise, that short section from the collateral channel to Western Avenue is in need of some four or five modern bridges, there not being a single bridge across the river—that is, a municipal bridge—which is suitable for the traffic which passes over it. The bridges at Western Avenue and California Avenue are both practically worn out and they would have to be replaced with different structures.

Mr. EATON. Do you think of anything else, Mr. Matthews, that ought to be brought out with reference to either side of this matter? We want to give both sides of this question, because we are not concealing anything that would be helpful to this committee and you are familiar from long experience with this stream.

Mr. MATTHEWS. I could only express the general opinion that I believe it is to the interest of everybody, no matter who they may be, that this stream be abandoned as such for its whole length from its junction with the canal west.

Mr. EATON. That is, from the junction with Canal E west.

Mr. MATTHEWS. Yes, although laying no great stress on that section lying between Canal E and Western Avenue.

Mr. EATON. But from Western Avenue west—

Mr. MATTHEWS. (Interposing). Decidedly; yes.

Mr. GRAHAM. I notice what you said in answer to my question about the Ogden ditch. We have some old maps here dating back to 1830 and I observe on them that there was a watercourse that ran clear out to the swamp where the Des Plaines River starts, about 7 or 8 miles west. I do not know of how much consequence it was, but it is shown on all the old maps as a natural watercourse.

Mr. MATTHEWS. It is perfectly true that there was a certain amount of water which depended for its shape and depth on the conditions of water in the Des Plaines River.

Mr. GRAHAM. There was, as I understand it, in early times a portage from Canalport over to the Des Plaines River.

Mr. MATTHEWS. That is correct, a portage which was largely carry, depending on the time of the year and the condition of the Des Plaines River. After the Des Plaines flooded pools were formed and the carry was then less. During a dry season the pools disappeared. The old pool known as Portage Lake and later as Mud Lake was of considerable size, making it sometimes a case of one carry and sometimes three or four carries. Both the stream itself, and the West Fork, according to the best maps, seemed to peter out somewhere between Western Avenue and Kedzie Avenue. That is the point, I believe, too, where Mr. Ogden and Wentworth began their stream which is now known as the Ogden Canal. It was first called the Ogden-Wentworth Canal, as they were the two men interested.

Mr. DENISON. What was the Ogden ditch built for?

Mr. MATTHEWS. Primarily, for the purpose of draining lands which were thought to be of great value, and which were, as just stated, partly submerged at times and at other times dry. It is low-lying land. It is approximately from 10 to 12 feet above the level of Lake Michigan, all the way from the Des Plaines River to the head of the old fork at about Western Avenue.

Mr. DENISON. If this river is filled up, how will that land drain?

Mr. MATTHEWS. There were, you might say, high stretches of land from pool to pool and by cutting a channel from these stretches the water passed out. It lowered the whole plane of water along that section. The elevation of the water of the Chicago River would be the same, approximately, as lake level, providing for a slope up from the lake. In other words, you could run a ditch or channel so that you might get water with an elevation of 3 or 4 feet above city datum and you could maintain the water at that elevation.

Mr. DENISON. But if this branch of the river should be filled up, how would that upper country drain?

Mr. MATTHEWS. I misunderstood your question. There is no difficulty there. It may readily be connected at one place or more with the sanitary channel at any place in the upper end. There are two locations; one is the so-called Robinson ditch and one is at Harlem Avenue, where by cutting a ditch perhaps only 200 feet in length, the small storm flow may readily be taken care of. I may say, though, that if this fork is filled it must be remembered that as the city develops the natural waterways are replaced by a system of sewers. The sewerage systems have already been extended westerly so that the ordinary water which used to go to this stream has now been cut off and is diverted and carried off by way of sewers, and that will be the case the whole length of the fork as the city develops. It is the case now for 4 miles out of the 7 miles.

Mr. EATON. That is your suggestion is either to turn the necessary drainage directly into the Sanitary Canal by another collateral channel constructed at a point further up the Sanitary Canal, or by way of the large sewers which will be constructed in this area in case the west fork is closed?

Mr. MATTHEWS. Yes, sir; the drainage above the filled area could be swung in and joined directly to the main channel; and for the water or drainage in that portion that is filled sewers would be constructed.

Mr. DENISON. Does this branch of the branch of the river contribute anything in the way of water supply to the Chicago River proper?

Mr. MATTHEWS. It does not; no.

Mr. DENISON. How long has it been since it did so?

Mr. MATTHEWS. The amount of water which would pass into the river naturally has been greatly reduced with the additions to the sewer system. That would be about 35 or 40 years ago since it began to be limited.

Mr. DENISON. That is all, thank you.

STATEMENT OF MR. MILTON J. FOREMAN, CHICAGO, ILL.

Mr. GRAHAM. General Foreman, we will be glad to hear from you.

Mr. FOREMAN. The west fork of the South Branch of the Chicago River naturally divides itself into two parts at the collateral channel. The pending bill relates entirely to the portion lying west thereof, and it is to that part I desire to address myself, if I may.

Of course, it is not a stream in any sense of the word. The water consists entirely of surface water and sewage. There are about seven city sewers, as I recall, that empty into it at various points west of the collateral channel. The west fork ends at its western end at what was once Ogden Ditch, but which now is filled with debris and rank vegetation. If sewers are built which flow into the Drainage Canal and the west fork did not receive the discharge from the sewers any more, the contents of its bed would speedily dry up, leaving only the sewage deposit. By no stretch of the imagination can that part of the fork ever be made a part of a navigable stream or of a waterway scheme. The owners of the property abutting thereon are unable to get the proper beneficial use of their property because of the noxious vapors and stink arising from the open sewer which this part of the west fork has become. In order to make this neighborhood livable and usable that nuisance must be abated.

In advocating the passage of this bill, I want to say to Alderman Eaton that we do not wish to be understood as concurring in the recommendation that a street shall occupy the bed of the fork, because it would cut right through the property and if its use is to be destroyed, it might as well be by noxious vapors as by a street which would have but limited value and use.

Mr. EATON. May I interrupt just a moment, General? Is it the idea, then, that the property owners are going to be enriched by so much land?

Mr. FOREMAN. No, sir; we do not care anything about that.

Mr. EATON. Is that what the Peoples Gas Co. are in this for—to get that land?

Mr. FOREMAN. No; we want the land to be free from stink. The passage of this pending bill will not affect any rights which the State may have.

Mr. EATON. But you are taking away a possible waterway, are you not?

Mr. FOREMAN. We merely want it understood that we are not committed to the proposed street plan.

The matter under discussion is well set forth in an official letter dated the 19th of February, 1919, from the commissioner of public works of Chicago to the chairman of the finance committee of the city council of the city of Chicago, of which I have a copy, and which I will ask leave to file after reading a portion of it. [Reading:]

"Previous to the construction of the drainage canal the west fork served as an overflow from the Des Plaines River during periods of high water. Since the sanitary canal was built it has served no useful purpose except an open sewer. For sanitary and other reasons it is advisable that, west of the collateral channel, the sewers be disconnected from the fork and the fork filled up. This will, in addition to abating a nuisance, remove the necessity for the construction of new and the continued maintenance of the existing bridges over the fork. It may be noted that bridges are now being built on both South Crawford Avenue and South Kedzie Avenue.

"The sewers discharging from the west fork west of the collateral channel may readily be connected to the Sanitary Canal, which lies approximately 2,000 feet south of the fork. These sewers include a 9-foot sewer on South Crawford Avenue (South Fortieth Avenue) and small sewers at South Hamlin Avenue, South Ridgeway Avenue, Lawndale Avenue, South Central Park Avenue, and South Kedzie Avenue.

"The South Kilbourne Avenue and the South Crawford Avenue sewers may each be directly connected to the sanitary canal, the Hamlin Avenue, South Ridgeway Avenue, and the South Central Park Avenue sewers may be brought together and connected to the canal by a sewer in South Central Park Avenue, and the Kedzie Avenue outfall may be carried east to an outfall."

That is all that is in this letter which is of interest to the committee.

Mr. GRAHAM. The date is what?

Mr. FOREMAN. The 19th of February, 1919.

Mr. GRAHAM. The letter may be inserted in the record.

(The letter referred to follows:)

HON. JOHN A. RICHERT.

Chairman Committee on Finance.

DEAR SIR: As requested by your letter of February 5, 1919, I submit herewith a statement of "necessary public improvements covering a period of five years." This statement is partial and includes only work that will fall under the jurisdiction of the bureau of sewers.

The bureau of sewers is a maintenance division, and ordinarily spends but relatively small sums for construction and betterments. At the present time, however, I urge the expenditure for sewer extensions to wipe out the nuisance in the west fork of the South Branch of the Chicago River (Mad Creek). This is a branch of the river located a little north of and approximately parallel to the drainage canal, and is a foul slough having a depth of but a few feet and no flow other than that of the sewage discharged into it. It is a nuisance, and will be more so with the development of the area through which it passes. Conditions are particularly bad west of the so-called collateral channel, which is a north-and-south canal connecting the west fork with the sanitary canal about on the line of South Albany Avenue.

Previous to the construction of the drainage canal the west fork served as an overflow from the Des Plaines River during periods of high water. Since the sanitary canal was built it has served no useful purpose except an open sewer. For sanitary and other reasons it is advisable that, west of the collateral channel, the sewers be disconnected from the fork and the fork filled up. This will, in addition to abating a nuisance, remove the necessity for the construction of new and the continued maintenance of the existing bridges over the fork. It may be noted that bridges are now being built on both South Crawford Avenue and South Kedzie Avenue.

The sewers discharging from the west fork west of the collateral channel may readily be connected to the sanitary canal, which lies approximately 2,000 feet south of the fork. These sewers include a 9-foot sewer on South Crawford Avenue (South Fortieth Avenue) and small sewers at South Hamlin Avenue, South Ridgeway Avenue, Lawndale Avenue, South Central Park Avenue, and South Kedzie Avenue.

The South Kilbourne Avenue and the South Crawford Avenue sewers may each be directly connected to the sanitary canal, the Hamlin Avenue, South Ridgeway Avenue, and the South Central Park Avenue sewers may be brought together and connected to the canal by a sewer in South Central Park Avenue, and the Kedzie Avenue outfall may be carried east to an outfall.

Because of the nature of the work of extending the sewers it is preferable that it be done in one construction year, and certainly not in more than two.

The estimate cost of the necessary sewer work is \$180,000.

Respectfully submitted.

COMMISSIONER OF PUBLIC WORKS.

Recommended by—

SUPERINTENDENT OF BUREAU OF SEWERS.

Mr. FOREMAN. Also, on the 21st of March, 1922, the Corps of Engineers, United States Army, submitted a report to Senator Jones with respect to this same matter, which was then pending in the United States Senate, and, if I may be permitted, I should like to read just a portion of that and then file it for the record. [Reading:]

"The west fork is now paralleled by the Chicago Sanitary and Ship Canal, situated about 1,500 feet to the south, which affords a commodious channel between the Chicago and Desplaines Rivers. That portion of the waterway affected by the bill, namely, the section between the collateral channel and the head of the stream, is of no particular value in its present condition, either for navigation or for wharfage. It may be described as an open sewer, discharging factory and other wastes into the sanitary canal by way of the collateral channel. Its depth is reported as from 2 to 8 feet, its wharfage possibilities have not been developed, and it is crossed by fixed bridges, obstructive to any type of vessel except the smallest skiffs and launches.

"It appears that on one hand a few private interests favor the retention of the section as a navigable waterway, while on the other hand the city of Chicago is said to wish to close it on account of its insanitary character.

Chicago, February 19, 1919.

"So far as the interests committed to this department are concerned, I know of no objection to the favorable consideration of the bill by Congress."

I also desire to file with the committee, if I may, a petition from practically all the property owners west of the collateral channel.

Mr. GRAHAM. We will be glad to have it.

(The petition referred to follows:)

APRIL 11, 1922.

The Congress of the United States, Washington, D. C.:

The undersigned owners of the lands lying along and abutting on all that portion of the west fork of the South Branch of the Chicago River in the County of Cook, State of Illinois, extending west from the west line of the collateral channel of the Sanitary District of Chicago, which west line is in the northwest quarter of section 30, township 39 north, range 13 east of the third principal meridian, hereby petition that said west fork of the South Branch as aforesaid be abandoned as a navigable stream and be declared a nonnavigable stream within the meaning of the Constitution of the United States, and that for such purposes S. 3177 or H. R. 10532, which provide therefor, now pending in Congress be passed by the Congress of the United States.

Frederick C. Aldrich, trustee; Ward C. Huston; California Ice & Coal Co., by Joseph Moudry, vice president; Steel Sales Corp., A. D. Dornay, president; Western Electric Co. (Inc.), by W. P. Sidley, vice president; Manufacturers Junction Ry. Co., by W. P. Sidley, general counsel; Chicago By-Product Coke Co., by T. G. Janney, manager; Chicago & Western Indiana Railroad Co., H. G. Hutzler, president; Chicago & Illinois Western R. R., O. P. Chamberlain, president; The Peoples Gas Light & Coke Co., by Charles A. Unsine, vice president; Agya Latkovic, by J. Latkovic, agent; Chicago Title & Trust Co., as trustee under Trust No. 6740, by T. J. Tansley, secretary; The Liquid Carbonic Co., W. K. McIntosh, vice president; Oscar Baur; Henry Pickas & Co. (Inc.), Edw. F. Zahnevsky, secretary; Fitzsimons Steel & Iron Co., Geo. W. Cardinal, vice president.

(Copy.)

WAR DEPARTMENT,
Washington, March 21, 1922.

HON. W. L. JONES.

Chairman Committee on Commerce,
United States Senate.

MY DEAR SENATOR: Referring to your letter of the 22d ultimo, relative to Senate bill 3177, Sixty-seventh Congress, second session, to declare a portion of the west fork of the South Branch of the Chicago River a nonnavigable stream, and referring also to your letter to the Chief of Engineers of the 24th ultimo, advising you of the necessity of calling upon the local district engineer for information needed in considering the merits of the measure, I now have the honor to present the views of this department concerning it, as follows:

The portion of the stream affected by the bill is the extreme upper section of about 2 miles in length, extending westward from the collateral channel which branches off from the west fork at a point about 1½ miles above the mouth of the latter. For convenience of reference, a map is furnished herewith, showing the general position of the west fork relative to Chicago River and Harbor on the east and Desplaines River on the west, and also showing the collateral channel.

In early days the waterway formed a portion of a route extensively used by commerce. Originally the source of the west fork was at or near the divide between the Chicago and Desplaines Rivers. Maj. S. H. Long, topographical engineer, made a report to the Secretary of War, March 4, 1817, in which the divide is referred to as follows:

"In the flat prairie above mentioned is a small lake about 5 miles in length, and from 6 to 30 or 40 yards in width, communicating both with the River Desplaines and Chicago River, by means of a kind of canal, which has been made partly by the current of the water, and partly by the French and Indians, for the purpose of getting their boards across in that direction in time of high water."

The lake described by Major Long was known as Mud Lake. As the land about it was low and swampy, the Cook County Drainage Commission constructed a ditch about the year 1874, connecting the lake and west fork for drainage purposes only. About 1871 a drainage cut, known as the Ogden-Wentworth Ditch or Ogden Ditch, was constructed from Mud Lake to a point near the Desplaines River.

For a time the waters of the Desplaines flowed at flood stages, through the ditches and through Mud Lake, into the west fork, carrying sediment into the south fork of the Chicago River. This became a nuisance, and the city of Chicago therefore cut off the flow between the two rivers by a dam or embankment constructed about 1874, which was replaced by a levee constructed by the Sanitary District of Chicago in 1894. The present head of the west fork is in the neighborhood of Forty-eighth Avenue.

The west fork is now paralleled by the Chicago Sanitary and Ship Canal, situated about 1,500 feet to the south, which affords a commodious channel between the Chicago and Desplaines Rivers. That portion of the waterway affected by the bill, namely, the section between the collateral channel and the head of the stream, is of no particular value in its present condition, either for navigation or for wharfage. It may be described as an open sewer, discharging factory and other wastes into the sanitary canal by way of the collateral channel. Its depth is reported as from 2 to 8 feet, its wharfage possibilities have not been developed, and it is crossed by fixed bridges, obstructive to any type of vessel except the smallest skiffs and launches.

It appears that on one hand a few private interests favor the retention of the section as a navigable waterway, while on the other hand the city of Chicago is said to wish to close it on account of its insanitary character. So far as the interests committed to this department are concerned, I know of no objection to the favorable consideration of the bill by Congress.

Sincerely yours,

JOHN W. WEEKS, *Secretary of War.*

Mr. EATON. General, do I understand that all of these interests you represent object to the highway or merely the gas people?

Mr. FOREMAN. I do not represent the gas people directly here to-day. At a meeting in my office practically all the property owners whose property abuts on the west fork of the South Branch were present, and the pending bill was unanimously favored by those whose property lies west of the collateral channel.

Mr. EATON. But how about a highway—some form of a highway?

Mr. FOREMAN. Everybody will favor some form of a highway.

Mr. EATON. That is what I wanted to get at. In other words, you are not opposing the idea of a highway there.

Mr. FOREMAN. Oh, no.

Mr. EATON. But a highway following exactly the river bed.

Mr. FOREMAN. Precisely.

Mr. EATON. The question of trading back and forth in locating that highway would meet the views of your people.

Mr. GRAHAM. General, do you care to express any opinion about that portion east of the collateral channel?

Mr. FOREMAN. Mr. Chairman, the only opinion I can give is derived from the expressions at the meeting held in my office. The statement was made there substantially the same as made here by the general attorney for the International Harvester Co., and because of difference in the situation east and west of the collateral channel it was deemed advisable to proceed only with the west end, about which there is no question or difference of opinion.

Mr. GRAHAM. We are much obliged to you, General.

Mr. Sackett, I think we would like to hear from you at this time.

STATEMENT OF MR. WILLIAM L. SACKETT, SUPERINTENDENT OF THE DIVISION OF WATERWAYS OF THE STATE OF ILLINOIS.

Mr. SACKETT. Mr. Chairman, there is very little I can say upon this occasion. A few months ago the Department of Public Works and Buildings of the State of Illinois filed an objection, through the Chief of Engineers of the War Department at Washington, which I think was transmitted to the chairman of the Interstate and Foreign Commerce Committee, and probably you gentlemen are aware of that protest. I have no authority to express or indicate any modifica-

tion of that protest against the passage of this bill, but I will say, personally, that there was some information presented here at this time which might indicate some change in the attitude of the department if the director was fully cognizant of that. I believe, personally, that this portion east of the collateral channel should not be closed. It is possible the director might not want to relinquish all of that west of the collateral channel, purely from the standpoint expressed in connection with the other case yesterday, of the possibility of development following the completion of this waterway.

I might suggest that in the protest filed it was indicated there had been no hearing before the department of public works and buildings of the State on this proposition, therefore there is a lack of information about the details of what is proposed here. In view of the difference of opinion that I expressed yesterday on the legal status of the matter and my friend, Congressman Denison's views of the rights of the State, I merely offer this suggestion: If the State has an interest or a legal control of this proposition why would it not be better that the matters be taken up with the proper authorities of the State and determined by them, based upon their view of State rights prior to action by Congress, and then submit it for such action by Congress that might be concurrent with any finding of the State.

Mr. DENISON. If you will permit me to suggest, Mr. Sackett, whatever rights the State may have in a navigable stream within its borders are subject to the paramount right of the Federal Government, conferred upon the Federal Government by the commerce clause of the Constitution, and naturally that reason would suggest itself. Now, if the Federal Government relinquishes its right to the stream as a navigable stream, whatever right it might have had will be waived in favor of the State, and then the State would have exclusive control over it.

Mr. SACKETT. And the State will be met immediately upon any consideration of these problems by the proposition that the Federal Government, which is supreme in matters of navigation, has abandoned all rights and the State officers will not be in position to proceed very far without probably getting into court by mandamus or otherwise to compel them to act.

Mr. DENISON. I should think it would be the State that would go into court and stop any action if they think they ought to be stopped.

Mr. SACKETT. It might be like it was down in Congressman Graham's district when we tried to serve the public interests down there. They immediately went into court to get an injunction to prevent us from doing it. We beat them out on that proposition simply because I convinced the parties in interest that we really wanted to help them and help the community, but that is what they did to us. They went into court before we had even a chance to do anything.

Mr. DENISON. I do not want you to put too much emphasis upon my views on this question of law as expressed here because I may be wrong about that, and what I wanted you to do and suggest you do, is to discuss the matter with your legal adviser, the attorney general, and I should be very glad if you would insert in the record for the benefit of the Congress any legal views that you or he may desire to express on that subject.

Mr. SACKETT. I am going to try to do that, but I am simply getting back to my experience in these situations.

Mr. GRAHAM. I think you had better attach to your remarks, when you revise them, a copy of the protest you filed with the War Department. I thought I had a copy of it in my files, but I do not find it.

Mr. SACKETT. Yes. My recollection is that it asked that for the time being, at least, this bill should not be passed because of a lack of information on the part of the State. That was about the extent of the opposition to this particular proposition.

I would like to have you hear from Mr. Barnes merely on his ideas from the study he has given to this proposition as to its advantages for terminal purposes.

Mr. GRAHAM. Are you familiar with the part of this old river where it empties into the drainage canal and the collateral channel?

Mr. SACKETT. No, sir, I am not personally familiar with that situation.

Mr. GRAHAM. You are acquainted with the portion west of the collateral channel?

Mr. SACKETT. Only in a general way. That is one of the propositions, as I say, about which the department is lacking information, because it has had no opportunity to have a personal inspection made by the proper officers. The matter was only incidentally presented to the department.

Mr. EATON. Of course, Mr. Sackett, from the point of view of the city, you understand we are just one set of officers, just as you represent another set of public officers, and we are simply wanting to be of the highest possible service to the public. Now, suppose Congress should take our view of it, to wit, that the best thing to do in this situation is to start at the top, namely, with the Federal Government, and give us a chance, by declaring this portion of the river nonnavigable, to deal with the local authorities, for instance, our legislature and the Illinois Department of Public Works, and yourself, you would be perfectly willing, would you not, to help us work out a scheme of some kind that would make for the highest and best use of this situation?

Mr. SACKETT. The only way I could answer that would be by referring you to the director of the department. I am sure his first consideration and mine would be the possible waterway use or development. That once out of the way there probably would be no difficulty in getting together on any reasonable proposition of public use, but that is the one thing that disturbs me—whether we are not deprived of public use when Congress acts.

Mr. GRAHAM. You are familiar, of course, with the Illinois statutes relative to the use of waterways?

Mr. SACKETT. Yes, sir.

Mr. GRAHAM. Does not the Illinois law provide that no one can build any obstruction across any stream in the State without the consent of the State authorities?

Mr. SACKETT. Yes, sir; that is an amendment to the existing law that I secured because of various abuses I found in progress when I took up this work; but that is very largely a police authority and supervision, and I am somewhat doubtful of how far that can be pressed if Congress, by action, being in control of navigation in situations of this kind, is to abandon them. That is one of the questions we met down in your district.

Mr. GRAHAM. Yes; I had that case in mind, and it has been my general supposition, at least as to streams that might be considered navigable, and I had no doubt about the proposition there, that the State can stop any obstruction from being put in the stream, whether the Federal Government exercises jurisdiction over it or not. Now, when you come to such streams as are not in fact navigable, I have always thought the State ought to have some control over them from a water power standpoint, if from no other standpoint, but whether they do or not, I am in doubt. This statute, however, which I am referring to, seems to give that power.

Mr. SACKETT. It was intended to give that power, but it has never been passed upon yet by the courts.

Mr. GRAHAM. Has it ever been construed by the attorney general of the State?

Mr. SACKETT. Yes, sir.

Mr. GRAHAM. What does he say about it?

Mr. SACKETT. It has been construed to give the specific, definite authority or power sought to be conveyed there.

Mr. GRAHAM. Has he ever passed upon the constitutionality of it?

Mr. SACKETT. No, sir; he has not. We have never had any contest about that law up to this time. I have been able to so administer the law, apparently to the satisfaction of the State and everybody else, that it has not been tested except in that one case I spoke of, and then I convinced the parties that we were prepared to serve them and assist them as well as the general community.

Mr. GRAHAM. That was a case of a dam across a small stream which was not in fact navigable.

Mr. SACKETT. It is a nonnavigable stream but the control there is found in another section of this law, section 23, I think, giving the State supervision for the disposal of flood waters, and that was the entire issue, merely the police authority to compel them to submit a plan of the structure they proposed to put in there to see that it was a proper and modern type rather than some obsolete type, such as had been maintained before.

Mr. GRAHAM. I believe that is all, Mr. Sackett; thank you.

STATEMENT OF MR. M. G. BARNES, CHIEF ENGINEER DIVISION OF WATERWAYS, STATE OF ILLINOIS, CHICAGO, ILL.

Mr. BARNES. I simply want to sum up the position of the State from an engineering standpoint in the closing of any of these waterways. It has been stated here by the proponents of this bill that the Federal Government has said it is not of interest to the Federal Government or to the National waterways

to improve this branch of the Chicago River. In view of what there is available now, it is quite possible that that position might be taken by the engineer officers. They are interested in interstate commerce, and there is a waterway of 20 feet depth and 160 feet width paralleling this branch a quarter of a mile away, which will satisfy interstate commerce, but there is another interest that is exceedingly important. Those who have voiced their minds here to-day have told me that it is impossible for them to attempt to do business on that waterway because of the extreme velocity that prevails at times. Much less could they do business on the waterway if it was obstructed by barges trying to do business in the same track or channel.

Mr. GRAHAM. What is the fall there in that stream?

Mr. BARNES. At times it exceeds 10 feet in the thirty-odd miles from the former mouth of the river to the power plant.

Mr. GRAHAM. And what is the velocity of the water?

Mr. BARNES. It varies, of course, at different points. It exceeds 5 feet per second in some places, and at other places it exceeds 8 feet per second at some hours, and it is difficult as an engineer to tell a layman just what it is, because of the way they use the water the power varies from hour to hour throughout the day, and it varies at different sections along the river. At the point in question here I should imagine that during the maximum draft of water there might be a velocity exceeding 5 feet per second.

Mr. GRAHAM. It is hard to navigate an ordinary boat in such a current?

Mr. BARNES. It simply means that the boat has got to overcome that velocity in order to make any headway, so that it takes more power, more coal, to navigate at all, and it is also dangerous where they have a restricted channel; what I mean by that is a canal or a narrow river channel, because they are liable to sheer off from side to side and collide with the banks or other vessels. It is just as sensible to ask a railroad operator to do away with sidetracks and stop trains on the main line and unload them and let the other trains stop as it is to stop these so-called side tracks, which they are, and use the main canal for a terminal.

Mr. GRAHAM. I am assuming that if they ever used that channel very much for purposes of navigation, they will build slips along it.

Mr. BARNES. Precisely; this is a slip and is one that we have now available.

Mr. GRAHAM. Yes; I think that is true, but if they were to use the main channel there they would build additional slips along there, would they not, and then you would have calm water with no current in it?

Mr. BARNES. No; that is feasible, but any boat that comes out of a slip into the main channel obstructs navigation. Here they have several miles of waterway that is entirely separate from the main channel, where slips and industries can be built without any interference with navigation in any way. Moreover, it has connections with the main channel at various points and the connections can be increased in number, so that boats can come under a reasonable headway into the main channel, the same as a train can go from a side track onto the main track.

Mr. GRAHAM. What do you say about that portion west of the collateral channel? Do you have any objection to filling that?

Mr. BARNES. I have; yes, sir. I think it is a crime to fill it. It is a portion of the navigable waters that are now left, and it is a portion where the Federal Government and the State government have a right of way. They will not have to purchase a right of way for any improvement, but simply have to make so-called collateral channels similar to the one we have at either end of the eastern portion in order to connect it with the main waters. Then you have got a navigable channel and a terminal at the side.

As to interstate commerce, you might argue that that is not a part of interstate commerce. It is a part of the duty of the State and of the city to provide terminals for industries, or, in fact, it might be the duty of the industry itself to provide its own terminals. The State of New York did not ask Congress to do anything in the construction of their waterway, and spent over \$175,000,000 in waterways and terminals without the aid of Congress, and it is an interstate waterway. In the improvement of that channel, wherever it was possible, they kept their terminals outside of the main channel and built their terminals in New York, Buffalo, Oswego, Syracuse, Rochester, and other places entirely separate from the channel. It is looked upon by the State authorities as a State business and not interstate business. At other places, of course, Congress has made channels for what might be considered private interests, but it is quite possible that the engineer's position is right in this case, that we

have an interstate channel paralleling it, and therefore, so far as the Chief of Engineer officers are concerned, and so far as the Secretary of War is concerned, this is of no interest. He does not say it should be abandoned.

It has been said here also that the bed of this stream is below the bed of the sanitary district canal.

Mr. GRAHAM. Above the bed of the sanitary district canal?

Mr. BARNES. Yes; I mean above the bed. I think the young man who said that did not think of what he was saying. Of course the bed of the sanitary district canal is very much below the bed of this stream. What he intended to say was that the bed of this stream is above the surface of the water in the sanitary canal. The sanitary canal, as we said a few minutes ago, has changed the direction of the flow of the water in the Chicago River and where there was a slope from this west branch to the lake downward; now the slope is reversed, and it is from the lake to this point downward; the change is several feet, so that if the Chicago River was flowing in its normal way, the way Nature intended it, there would be considerable water in this west branch. I have a map of a survey made by the War Department in 1911 by Colonel Zinn, which shows the depth of the water as far westward at least as Ridgeway Avenue and the crossing of the Illinois Central Railroad. I do not happen to have with me the map west of that, so I can not give you information as to what the depth of water was west from that point, but from that point eastward the water in many places was as much as 7 feet below the Chicago city datum, which is the surface of Lake Michigan in low water, or approximately that. There are points where the depth is as low as 2 feet, and even less than 2 feet. There is one rock section, where they call it a natural dam, where the water runs from 1 foot to 3 feet in depth. That is below the natural lake surface. I am reading from Chart 20 of Colonel Zinn's report on the Chicago River, west fork of the south branch, dated 1911, and that shows a channel proposed at that time by Colonel Zinn.

Mr. GRAHAM. May that map be left with the committee?

Mr. BARNES. It is a part of my personal files, but it can be obtained from the War Department, or I could make you a photostat copy of it.

Mr. GRAHAM. We can get a copy from the War Department.

Mr. DENISON. If the Government should want to deepen that channel, you think they would have a perfect right to do that under existing law?

Mr. BARNES. Yes; it was declared by the Supreme Court only a year ago that it was a navigable channel. It is now a navigable channel in certain times of the year and has been used as a navigable channel.

Mr. DENISON. You say that was declared by the Supreme Court?

Mr. BARNES. Yes, sir.

Mr. DENISON. What case was that?

Mr. BARNES. The case of the Economy Light & Power Co. against the State of Illinois.

Mr. DENISON. You mean the Supreme Court of the United States?

Mr. BARNES. Yes.

Mr. DENISON. Were they talking about this west branch of the river?

Mr. BARNES. They were talking about navigation from Lake Michigan down the Des Plaines River, of which this forms a part. They do not mention specifically this short portion but that was a portion used as I can show you from a map attached to the same report that I read from a moment ago.

Mr. DENISON. I have a misunderstanding about that. I did not know this west branch was a part of the chain of navigation down the Des Plaines River.

Mr. BARNES. Yes, sir.

Mr. DENISON. How do you get out of it into the Des Plaines River?

Mr. BARNES. They come up the Chicago River through this west branch you are considering now and connect with the Des Plaines River at this point. Here [indicating on map] is the Ogden ditch and that was the connection and the portage where boats were carried from point to point was from that point to this point [indicating], so that this was a navigable stream. It formed a part of the navigation from Chicago to the Des Plaines River.

Mr. EATON. Did you ever know of a vessel going through the Ogden ditch in that way?

Mr. BARNES. Not recently; no, sir; because it has been filled up by sewers.

Mr. EATON. Did you ever know of any transportation going through the Ogden ditch?

Mr. BARNES. It is a matter of court testimony that there has been—not through the Ogden ditch but through the west fork.

Mr. EATON. Then you are talking about another water route from the West Fork to the Des Plaines River?

Mr. BARNES. Yes, sir.

Mr. EATON. Was there ever a vessel of any kind or character that went through the Ogden ditch?

Mr. BARNES. I can refer you to the testimony in that case decided by the Supreme Court.

Mr. EATON. I am asking you.

Mr. BARNES. I do not know. I am comparatively a newcomer.

Mr. EATON. The only thing that was said in that testimony was with reference to the Des Plaines River?

Mr. BARNES. No, sir; that testimony spoke of both streams.

Mr. EATON. I heard Professor Shepherdson's testimony and a good deal of the other testimony and I am here to say it did not.

Mr. GRAHAM. What is the citation of that case? Do any of you know?

Mr. BARNES. I do not know the citation.

Mr. EATON. It was the Economy Light & Power Co. case. We can give you the volume and page number here; do you want both citations?

Mr. GRAHAM. Yes.

Mr. DENISON. In the Illinois Supreme Court reports it is volume 241, page 290, and I would like to have the citation to the United States Supreme Court reports where that decision was reversed, if you can give it.

Mr. APPELL. That case did not go to the United States Supreme Court. It was another case involving the same company that went to the Supreme Court of the United States.

Mr. GRAHAM. Have you that citation?

Mr. APPELL. Two hundred and fifty-six Federal Reporter, page 792, and that was affirmed in the United States Supreme Court. I think it was the 255th U. S., but I will have to look that up.

Mr. EATON. Mr. Barnes, do you think it is within the reach of imagination that the sanitary canal will require storage space for barges which might ply on it which would occupy both the space of the West Fork and the old I. & M. Canal?

Mr. BARNES. I think it is entirely within reason to believe that.

Mr. EATON. Do you know of any canal in the world which has storage capacity of over double its hauling capacity. Can you name any canal in the world that has ever felt called upon—

Mr. BARNES (interposing). Yes.

Mr. EATON. Where?

Mr. BARNES. The New York State Canal.

Mr. EATON. Do you mean to say that they conduct, or built on both sides of the New York State Canal, storage capacity of double the drawing capacity. Is it not from straight slips right off the canal?

Mr. BARNES. No, sir; it is not. They have several slide slips and side canals. It is not necessary to save this alone for storage but for industry. There are sites here for industries.

Mr. EATON. Of course, there are, and that is what we want to put on them.

Mr. BARNES. Then you want transportation.

Mr. EATON. Of course we want transportation but does there necessarily have to be transportation on both sides of it.

Mr. BARNES. Exactly. You do not have room enough now for one-tenth of the commerce likely to come here when we can get the waterways that the whole Middle West is asking for and the waterway through the St. Lawrence. You now have to send them out of town 15 miles in order to get a terminal.

Mr. EATON. Have you ever been over the river and looked at the slips of the Chicago River that are not used?

Mr. BARNES. Yes.

Mr. EATON. How many are there?

Mr. BARNES. I do not know how many there are.

Mr. EATON. Nine-tenths of them are not used.

Mr. BARNES. Exactly, because there is no barge canal there.

Mr. EATON. Why not?

Mr. BARNES. Because of opposition.

Mr. EATON. By opposition you mean bridges and other things that come from the large industrial expansion there?

Mr. BARNES. There is opposition aside from the physical opposition.

Mr. EATON. What is that opposition?

Mr. BARNES. Land grabbing schemes, railroad opposition, etc.

Mr. GRAHAM. Gentlemen, I guess we have proceeded far enough along that line, and I think we will now hear the district engineer.

**STATEMENT OF MAJ. R. W. PUTNAM, DISTRICT ENGINEER,
UNITED STATES ENGINEER OFFICE, CHICAGO, ILL.**

Mr. GRAHAM. Major, have you examined the proposition proposed by this bill?

Major PUTNAM. I have examined the proposition west of the collateral channel, but not east of it.

Mr. GRAHAM. Tell us, in a general way, what you think about it.

Major PUTNAM. That is fairly well expressed in the citation read by General Foran in the letter from the Secretary of War, as that was based on a recommendation from my office, to the effect that the stream west of the collateral channel was crossed by fixed bridges, was very shallow, and was not in a state to warrant its being continued as a navigable waterway. This recommendation was based on the supposition that to improve that, even for barge traffic, would entail enormous expense which would hardly be justified.

Mr. GRAHAM. Do you concur in that view?

Major PUTNAM. I do, sir.

Mr. GRAHAM. Has this matter ever been submitted to the Secretary of War, to your knowledge, since the former report which has been referred to?

Major PUTNAM. No, sir.

Mr. GRAHAM. In connection with this particular bill, has any reference been made to your department?

Major PUTNAM. This particular bill was referred to my department last spring and we submitted the recommendation which I just recited. The Chief of Engineers wrote a letter to the Secretary of War embodying my recommendations, and the Secretary of War wrote the committee.

Mr. GRAHAM. What do you say about that portion of it that is now proposed to be added by way of amendment—the portion from Canal E to the collateral channel? It is proposed now to amend the bill and declare that nonnavigable. What is your view about that?

Major PUTNAM. My view about that is that action of that nature should be taken with a great deal of caution. You have here some very large industries which are apparently interested in the navigation possibilities of this channel, and it has been the attitude of the department, wherever local interests desire and can show that they can and will use a proposed waterway, to give those interests consideration. The same could not be said about the portion west of the collateral channel. All the interests down there had no use for navigation. It is apparent that it is navigation of a type which will use the sanitary district canal, which might be entrained. It is true that there are bridges in here, some of which will have to be altered for barge navigation, but not as many as you have in the other stretch, and it seems to me this would be reserving enough of this portion to take care of the navigation needs of the future.

Mr. GRAHAM. I got it into my head in some way the other day that the Kimball people, who are located on this portion of the stream, had spent some money on their own account in trying to build docks and trying to use that river. Do you know anything about that?

Major PUTNAM. No, sir. All I know is that about 1911 or some such time, when agitation was made for the improvement of this stretch by the Federal Government, the Kimball Co., I believe, was one interest that advocated it very strongly. That was to continue the improvement which we had stopped at Robey Street, I believe, up the west branch for a depth of 21 feet. That was subject to several hearings and recommendations to congressional committees and was reported on adversely.

Mr. GRAHAM. From the map it looks as if about two-thirds of that frontage inside the loop belongs to the International Harvester Co., while the remainder seems to belong to the city of Chicago.

Mr. EATON. The report made by the engineer says four-sevenths.

Mr. PRENDERGAST. The International Harvester Co. owns from here clean up as far as you can see there, with the exception of the piece that my brother and I own in here [indicating on map].

Mr. GRAHAM. Where is that, Mr. Prendergast?

Mr. PRENDERGAST. On Western Avenue and the river. I am located on the south side of the river and on the west side of Western Avenue.

Mr. GRAHAM. Is that the part marked "John Fitzpatrick Co."?

Mr. PRENDERGAST. Yes; my brother and I own that. We have 401 feet on the river and the McCormicks or the International Harvester Co. own the rest of it, and then they own on this side [indicating] up to the Kimball plant.

Mr. GRAHAM. You mean by "this side" the north side?

Mr. PRENDERGAST. Yes. The Illinois Northern Railroad in there is a subsidiary of the International Harvester Co.

Mr. EATON. Major Putnam, do you know anything about the formation along here [indicating]? Is not part of it rocky?

Major PUTNAM. Yes; but the depth below the water surface I am not familiar with. That was one reason for not attempting to deepen it to 21 feet.

Mr. EATON. In other words, the Bridewell property is in there and we have our stone quarry there and that same rock ledge runs into this river bed?

Mr. GRAHAM. Major, the principal question in my mind now is how many of these landowners along this portion, which I have designated as the loop, being that portion east of the collateral channel, have ever tried to use that stream. Do you know how many of them have docks or have any preparation for the use of it?

Major PUTNAM. I do not think any real attempt has ever been made to utilize that section of the stream, either to my personal knowledge or from a study of our records.

Mr. GRAHAM. Do you know whether any of those industries were located there with that in mind?

Major PUTNAM. No, sir. Of course, I think all of these industries were located here long before there was the possibility of this through waterway which is now being constructed. They were really interested for a long time in access to the lake.

Mr. GRAHAM. That is what I assumed—that they possibly were located there because they could get to the lake by water; but you do not know about that?

Major PUTNAM. I do know that in this agitation for a depth sufficient to get to the lake these interests in here [indicating] were very anxious to get it.

Mr. GRAHAM. Am I right in assuming that you as district engineer do not think that part of the river ought to be abandoned?

Major PUTNAM. Not east of the collateral channel.

Mr. GRAHAM. But so far as that portion west of the collateral channel is concerned the Government has no objection?

Major PUTNAM. No, sir.

Mr. EATON. And your objection from the Government point of view is purely that you think some of those interests are interested in something that might be developed there; that is, independent of the interests, you would have no interest in it.

Major PUTNAM. Only in its potential value for industries actually located there.

Mr. EATON. In other words, aside, for instance, from the International Harvester Co. now reversing their former position and thinking they might use it, you think that it ought to be left there?

Major PUTNAM. I think it should be left there until it is determined that it is not going to be used as a waterway terminal. There is enough chance of its being used, in my opinion, to retain this small loop.

Mr. EATON. I understood in talking with Mr. Hess, of the International Harvester Co., that he was not interested in this question of its navigability or non-navigability, but he was only interested in dealing about it with the State; and that is the reason I was bringing that question up, and that he was considering this purely from the standpoint of a barge channel there that the State would maintain. In their prior communications they said that even though it was dredged by them it soon silted up, and I suppose if that was done there would have to be some responsible body that would keep any channel that was opened dredged out continuously.

Major PUTNAM. The Federal Government could not keep it open; that is, the engineer department could not keep it open except as provided for specifically by Congress. There is no such act now in existence.

Mr. GRAHAM. That is all, Major; thank you.

STATEMENT OF MR. JAMES T. PRENDERGAST, CHICAGO, ILL.

Mr. PRENDERGAST. I was notified of the meeting here and I am interested, as I said before, in the piece of property located here [indicating].

Mr. GRAHAM. You are indicating now the portion marked on the map "John Fitzpatrick Company."

Mr. PRENDERGAST. Yes.

Mr. GRAHAM. What is your attitude about this matter, Mr. Prendergast? Do you want this shut up or not?

Mr. PRENDERGAST. Well, I might say it will benefit the city somewhat so far as the bridges are concerned. I have got to admit that, but I have also got to admit that we take our water for our boilers and our tanks from the river, and if the river is closed up, of course, we will have to use city water and will have to pay for it. I am candid with you. We do not have to pay that now, but I am not in position to say that I am opposed to it from a selfish motive like that.

Mr. GRAHAM. What do you think of it from the standpoint of possible navigation?

Mr. PRENDERGAST. Well, I do not think it is navigable. You would have to spend, I presume, several million dollars. The drainage canal, 14 years ago, tried to dredge that stream there west of Western Avenue and they spent thousands of dollars. It is all rock. There is not 3 feet of water there now at our plant and I remember when there was 8 or 10 feet, but I can walk out there now.

Mr. DENISON. The rock did not get in there in that time?

Mr. PRENDERGAST. No; but the Bridewell has one of the best stone quarries in Chicago to-day just four blocks west of there, and underneath all of that property it is all rock.

Mr. GRAHAM. You say there was about 8 feet depth at one time and now about 3, so I assume that it was not rock that was deposited there but silt or sediment.

Mr. PRENDERGAST. Mr. Chairman, when the sanitary board blasted up there and tried to deepen the river there, they attempted it east of Western Avenue and then west of the Panhandle tracks, and then after spending thousands of dollars they abandoned the proposition. They could not make it go. The Kimball Co. were interested in it and we were also. There was one boat that went up there 12 years ago and stuck near the Western Avenue bridge, and I had to go around the Panhandle tracks to get into our factory. It was stuck there for three days and could not get out.

Mr. DENISON. Mr. Prendergast, those gentlemen that are in the Bridewell are quarrying rock, are they?

Mr. PRENDERGAST. Yes, sir.

Mr. DENISON. What would you think of letting them get on the outside and quarrying the rock out of this canal and deepening it?

Mr. PRENDERGAST. That would be a good proposition if they could do it.

Mr. DENISON. Would not that be pretty well advised if you could arrange some sort of plan by which those inmates there could be put to quarrying the rock so that it could be made serviceable for purposes of navigation?

Mr. PRENDERGAST. I presume it would be, but if you go along the drainage canal out there you will see that there are hundreds of feet built up with rock that they have no use for.

Mr. DENISON. Let me ask you this question: Suppose the United States Government should decide to go along there and deepen that channel and make a loop right around there to the diversion channel so as to make navigation around there complete so that barges could come in and turn around and go right back out if they wanted to; if you thought that could be done would you be in favor of closing it up or would you prefer to have it left open for navigation?

Mr. PRENDERGAST. If I thought it would be navigable I certainly would be in favor of having it open, because I have 401 feet there on the river. I would be willing to dock it if I could get boats up there to-day.

Mr. DENISON. Of course, your attitude toward it now is based upon its present condition.

Mr. PRENDERGAST. Yes; upon its present condition.

Mr. DENISON. That is all, thank you, Mr. Prendergast.

Mr. GRAHAM. Is there a representative of the sanitary district here?

Mr. EATON. The attorney of the board was here but I think he has left.

Mr. GRAHAM. I would like very much to have their judgment about this matter.

Mr. EATON. I told him you wished to have that and he said he would probably have somebody here, but that they had had a meeting day before yesterday on this matter and decided in the board to take no stand one way or the other on this thing.

Mr. DENISON. Then we are authorized to take that as their attitude?

Mr. EATON. Yes, sir; that is what he stated definitely to me.

STATEMENT OF MR. WILLIS D. NANCE, CHICAGO, ILL., REPRESENTING THE BARRETT CO.

Mr. NANCE. I would like to have you gentlemen see our position, because it is rather material. We are right at the head of the collateral channel and at the beginning of the deep part [indicating on map].

Mr. DENISON. What business is the Barrett Co. engaged in?

Mr. NANCE. The Barrett Co. is one of the largest manufacturers of building materials and paving materials in the country—Tarvia and such material, and roofing material and all kinds of construction and building materials.

At the outset I want to make two points, if I may: First, that we have no objection at all and never have had to the closing up of the west fork of this south branch west of the collateral channel. The second point is that the closing up of the east part of the river was not brought to our attention until lately, in fact, only a week or so ago. The amending of this bill now before Congress is a new proposition, so that we are like Mr. Sackett. We have not had an opportunity to study the situation at any length. However, we will say that at the present time we do make some use of that river.

Whether it is a material use or not, I am inclined to doubt, but we do make some use of it. For instance, like the International Harvester Co. and the Fitzpatrick Co., we do take water from the river and we have intakes here up to our factory from the river, and we also have at the head of the collateral channel—it is a little doubtful whether it is a part of the collateral channel or the branch—a small dock, and we do run lighters and barges up the collateral channel up to our factory at the head of the channel and on the river. It is not an up-to-date dock and we know that in its present state this branch of the river is not navigable, but we do run them up the collateral channel and have a small dock there.

Now, as to the amount of business we do, we get gas tar from the People's Gas Light station and we do a business on an average of about 85,000 to 100,000 barrels a year, the cost per barrel, bringing it by water through the collateral channel, being about 6.5 cents per barrel.

Mr. GRAHAM. Where do you bring it from?

Mr. NANCE. That is one thing I can not answer. It is from the People's Gas Light station somewhere along this canal or down there somewhere. We bring it down here and up the collateral channel to our factory here [indicating].

Mr. GRAHAM. You bring it up the canal?

Mr. NANCE. Up this channel.

Mr. GRAHAM. You bring it from the gas company's station up the drainage canal and then up the collateral channel?

Mr. NANCE. That is right; yes, sir.

Mr. GRAHAM. Is it brought on barges?

Mr. NANCE. Barges and lighters; yes, sir.

Mr. GRAHAM. Any trouble about doing that?

Mr. NANCE. No, sir; no trouble at all.

Mr. GRAHAM. Do you ever have any trouble about the current that these gentlemen have spoken of?

Mr. NANCE. No, sir.

Mr. GRAHAM. How large are the boats?

Mr. NANCE. I can not answer that; but as to the amount of business, it is between 85,000 and 100,000 barrels a year. We figure that the cost per barrel by water is 6.5 cents and we figure that the cost per barrel by rail, if we had

to use rail transportation, would be between 15 and 16 cents, or about three or four times as much. In other words, during one year, if we did not have those water facilities, it would cost us somewhere between \$10,000 and \$12,000 a year to bring it by rail, just for that particular business. Also, as I have said, we do have a small dock there that these barges come up to. I believe it is a part of the head of the collateral channel as much as it is the river, and if it is not repetition we do take the water from this river, and if we had to buy the water from the city it would cost us between \$15,000 and \$20,000 a year more. Of course, that is a personal element.

This factory has only been there for a few years, comparatively, and it was situated at that particular point, for one reason, because of its situation with reference to water. It is situated at the head of this collateral channel and the west fork of the river, and our products at the present time are sent by rail and by truck. We have a lot of trucking. For instance, we send a lot of paving material down into the northern part of Indiana and into southern Illinois by truck when, we believe, if at any time this waterway development should be created, we could do that by water much cheaper—about one-fourth cheaper than we could do it by rail or by truck. We have not been banking too much on that, because the progress on that waterway development has been slow, but in answer to the question you asked Mr. Prendergast, I think that the Barrett Co. would use that quite considerably if the Federal Government ever made it navigable. We have not had enough time to consider this particular matter.

We always have had no objection to the closing of the channel west of the collateral channel, but it has been only a week or two since we were notified that they were thinking of closing it up east of the collateral channel. I will say, however, in fairness to all concerned, that we are situated so that we could probably get almost the same results as we get now from the collateral channel by building docks a few hundred feet from our plant and having the lighters stop there instead of coming up directly to our plant, and we could probably build sites into the collateral channel by extending them and get our water from the collateral channel, so that if we were the only ones, if we decided to oppose this definitely—if we were the only ones we would probably not stand out against it for the reason that we could get both of those advantages from the collateral channel.

Mr. EATON. And you understand, Mr. Nance, that so far as the city is concerned, they would be perfectly willing to make any adjustment that might prove necessary and to leave you a slip in there, if you wanted it, so as to cover that part of it.

Mr. NANCE. Yes; you told us that this morning and we appreciate that and would like to have that done.

Mr. EATON. I notice there are some men here from the railroad interests. Do you want to hear from the Baltimore & Ohio Railroad and the other railroads?

Mr. GRAHAM. Yes; we will hear from them.

STATEMENT OF MR. G. P. PALMER, ENGINEER, MAINTENANCE AND CONSTRUCTION, BALTIMORE & OHIO CHICAGO TERMINAL RAILROAD, CHICAGO, ILL.

Mr. PALMER. When we were notified of this hearing, we understood it was for the purpose of approving the position of the City relative to closing this west fork of the river. We have at the present time a bridge, originally a lift bridge. It is now entirely out of date and will have to be entirely rebuilt within a few years if it is to be kept there.

Mr. GRAHAM. That is just west of Western Avenue.

Mr. PALMER. Yes, sir; and we feel that the public interests, in so far as this stream is concerned, provided it is closed west of the collateral channel, are not of any great importance except for a few of the industries here which we believe can be satisfied and taken care of by leaving the channel open east of Western Avenue for the International Harvester Co. and leaving the collateral channel open only for the Barrett Co. That leaves only the Kimball Co., besides the city, who will not have water frontage in the event it is closed, and I do not know what their position would be. The city, as I understand it, is not interested in leaving the stream open for navigation, and the gentleman from the International Harvester Co., this morning, I understood, said that if it came to that point, they could probably be taken care of by leaving it open east of Western Avenue.

Mr. GRAHAM. Your company favors the proposal to declare this stream non-navigable, does it?

Mr. PALMER. Yes, sir.

Mr. GRAHAM. If that were done, of course, you would have a grade crossing there instead of a bridge?

Mr. PALMER. You mean with anything that might be developed in there?

Mr. GRAHAM. Yes; where you cross the present channel of the river you cross on a bridge?

Mr. PALMER. Yes.

Mr. GRAHAM. Of course, if that were filled, you would cross on a solid fill?

Mr. PALMER. Yes. If, on the other hand, a street were put there, as has been talked about, that could go under or at grade, but probably under, but a street bridge would not be as expensive a proposition as a movable bridge over a stream.

Mr. GRAHAM. You do not cross the sanitary district canal there?

Mr. PALMER. Yes; we cross it right here [indicating]. We have a lift bridge there.

Mr. GRAHAM. That is directly south of the crossing over the river?

Mr. PALMER. Yes, sir; about 1,000 feet south.

Mr. GRAHAM. You serve those industries there—the International Harvester Co.?

Mr. PALMER. They have their own railroad facilities—the Illinois Northern Railroad.

Mr. GRAHAM. How long has your road been there?

Mr. PALMER. Since about 1890, or in that vicinity.

Mr. GRAHAM. Some of the bridges crossing there. I observed, have piling driven into the bed of the river. I do not know whether it is at that point or not, but if my memory serves me right, some of them have the channel completely shut off by piling.

Mr. PALMER. I think it is this bridge here [indicating] that you have reference to, which is the Chicago & Illinois Western bridge.

Mr. GRAHAM. It is impossible at this time to get through there with a boat because of that piling, is it not?

Mr. PALMER. Personally, I am not familiar with it, but I know they have a trestle bridge. At the present time the river is blocked at the Western Avenue bridge, so there is no chance to get that far.

Mr. GRAHAM. Blocked how?

Mr. PALMER. By the natural filling in of the channel, so that there is no chance to get through without first dredging up to the bridges.

Mr. GRAHAM. You have a drawbridge?

Mr. PALMER. We have a lift bridge. It is not now operating, however, but could be made operative upon giving us a little advance notice.

Mr. DENISON. Do you know whether you got the consent of Congress to put those bridges across there?

Mr. PALMER. No, sir; I do not. I have only been identified with this road since 1910, and I do not know the history of the original bridge.

Mr. DENISON. That is all; thank you.

STATEMENT OF MR. E. C. GEGENHEIMER, REPRESENTING THE PENNSYLVANIA RAILROAD CO., CHICAGO, ILL.

Mr. GRAHAM. How near is your railroad property to the property of the Baltimore & Ohio that has just been mentioned?

Mr. GEGENHEIMER. We are immediately adjacent to them.

Mr. GRAHAM. What side are you on?

Mr. GEGENHEIMER. We are west.

Mr. GRAHAM. What is the attitude of your company about the proposal to declare this portion of the river nonnavigable and fill it up?

Mr. GEGENHEIMER. We favor it.

Mr. GRAHAM. What is your reason?

Mr. GEGENHEIMER. At the present time we have a desk plate girder swing bridge over the river at that point that is manually operated and as far as I can recollect has not been turned for about 11 or 12 years. This bridge is double track and divides our four-track system at that point, necessitating switch tenders 24 hours daily.

Mr. GRAHAM. And you feel that if this were declared nonnavigable you could run your road across there on a fill?

Mr. GEGENHEIMER. Yes; we could have a continuous four-track system and eliminate switch tenders, reducing delays.

Mr. GRAHAM. I suppose you do not know much about the possibilities of this stream from a navigation standpoint?

Mr. GEGENHEIMER. No, sir; I have not considered that, except I have been up this stream and know it is not navigable.

Mr. GRAHAM. It is very evident at this time you could hardly navigate it with a rowboat, and the only question is whether it could ever be made into anything of a kind that would be beneficial to those industries, and the other interests involved.

Mr. GEGENHEIMER. I would say that this is in the same category as the Illiana Harbor proposition—purely potential. Of course, you could make some things out of it if you wanted to spend millions of dollars.

Mr. GRAHAM. That is true, and I do not know in the future what may happen or how far we will go in the development of these waterways. At present we are not doing much with them, but they do a great deal with them in other countries.

Mr. GEGENHEIMER. Absolutely, and it seems there is being a concerted effort made to develop Illiana Harbor, and if they are attempting to concentrate everything at Illiana Harbor why should we cut our water system and have the terminals scattered all over?

Mr. DENISON. How far is Illiana Harbor from here?

Mr. GEGENHEIMER. It is just on the State line between Illinois and Indiana.

Mr. DENISON. How far is that from here?

Mr. GEGENHEIMER. Fifteen miles.

Mr. DENISON. How do you get down there from this channel?

Mr. GEGENHEIMER. You would not get down there from this channel. It would be via Lake Michigan and Wolf Lake. That would be the way you would get there if it was ever developed.

Mr. DENISON. So that commercial boats coming up this drainage canal from St. Louis and all the way down the river—

Mr. PALMER (interposing). They would use the Sag Channel.

Mr. DENISON. How would they get over there? Is there a Sag Channel connection there now?

Mr. GEGENHEIMER. I do not know about that.

Mr. PALMER. The Sag Channel connection which comes in about 6 or 8 miles south cuts across country over through Blue Island to where this proposed harbor is being developed by the Government engineers in connection with what is known as the Calumet River.

Mr. DENISON. What is the size and depth of this Sag Channel connecting with the drainage canal?

Mr. PALMER. It averages about 50 or 60 feet wide, as I recollect, and about 20 feet in depth, or perhaps not all of 20 feet, but where it crosses us at Blue Island it is about 20 feet deep and 60 feet wide.

Mr. DENISON. About half the size of the regular drainage canal.

Mr. PALMER. Just about.

Mr. SACKETT. May I give you this information, for the benefit of the committee: The Illiana Harbor is purely a contemplated project. Nothing whatever has been determined or decided upon in connection with it at this time. That is a matter I referred to yesterday as being under investigation and subject to report to the legislatures of the two States together with a report to the Chief of Engineers. The sag channel would be the probable route for towing boats coming up from the south through, but before they can get through there is an immense territory to be developed, so that if any boats came up at this time they would have to go through the Chicago River and down the Lake.

Mr. DENISON. Has Congress ever adopted the project for the Illiana Harbor?

Mr. SACKETT. No, sir; it is purely in an investigative stage and the subject of reports through the office of the Chief of Engineers and to the two legislative bodies of the respective States. That is 15 miles away so that necessarily there must be some means of terminals within the loop portion of Chicago or else you multiply the cost.

Mr. GRAHAM. Is there anything further you care to add, Mr. Gegenheimer?

Mr. GEGENHEIMER. Nothing further that I care to add.

Mr. EATON. There is just one other fact that many people do not seem to know, and I think perhaps you ought to have it in your record. Our harbor master informs us that the city of Chicago tries to maintain a dock line through here.

Mr. GRAHAM. We will hear your harbor master now.

STATEMENT OF MR. M. W. OETTERSCHAGEN, ENGINEER, RIVERS AND HARBORS, CHICAGO, ILL.

Mr. EATON. Mr. Oetterschagen, will you tell these gentlemen about this harbor line or dock line?

Mr. OETTERSCHAGEN. I will have to go back and explain what the policy of the office is. Of course the office—the bureau of rivers and harbors of the city—concur or go along with, as the popular phrase is, the United States district engineer office, and in view of the fact they have maintained this to be a navigable stream the city of Chicago, through the bureau of rivers and harbors, takes steps, as far as it can, to help the waterways along.

Of course, the primary excuse for our existence is the preservation of waterways. That is our ambition and that is our duty. Consequently, among other things, we have the establishment of dock lines, and it so happens that the Federal Government leaves it to the city to establish dock lines to a great extent, and a predecessor of mine by the name of Mr. Burke, whose name appears on the maps, when he entered the duties of engineer of rivers and harbors in 1887, found this map, which was a record of a dock-line agreement between the original property owners and the city of Chicago. The proposition provided for dock lines parallel and 175 feet apart centering approximately on the bed of the west fork. These dock lines extend from Western Avenue to Crawford Avenue, a distance of 2 miles. Just what treatment was made west of Crawford Avenue is unknown to me and to the records in the office, probably due to the fact that that was so far away from the city at that time, that that is probably the reason it was not considered, but this plat shows the dock-line proposition and is referred to as the "old proposition of owners prior to 1887." We have no other reference to it.

Mr. EATON. Is it shown anywhere in any of the established books of surveys?

Mr. OETTERSCHAGEN. Yes, sir; by Greely & Carlson. That is a survey company that has been surveying ever since about 1870, and they compiled a set of atlases known as the Greely-Carlson Atlas, and this dock-line proposition appears on the Greely-Carlson Atlas, and thus they have some status. Whether the status is purely legal or simply tentative I do not know.

Mr. GRAHAM. Was it recorded?

Mr. OETTERSCHAGEN. I could not say as to that.

Mr. GRAHAM. Did you ever look in the recorder's office to see whether there is any record of this?

Mr. OETTERSCHAGEN. The surveyors in making their surveys and filing their plats of subdivisions recognize the line and the line appears on every survey that has been made in the district since 1887.

Mr. EATON. Are you enforcing it now continuously?

Mr. OETTERSCHAGEN. We have been enforcing it ever since this map was in the possession of the harbor master's office or the bureau of rivers and harbors, and it comes to pass from time to time that the industries abutting on the West Fork need water service intakes, sewers or fences or buildings, and other similar construction which, according to a city ordinance, are required to be covered by a harbor permit, and the harbor permits that have been issued for that work, wherever they project riverwards of the dock line contain a 30-day clause. In other words, they are temporary permits and are subject to cancellation on 30 days notice from the commissioner of public works, which means that structures that are built under those permits, extending beyond the dock lines, are subject to removal within 30 days upon written notice from the commissioner of public works.

Mr. GRAHAM. That is what those dock lines mean—that the people building along there can not build beyond that line?

Mr. OETTERSCHAGEN. Yes, sir.

Mr. GRAHAM. Have they in fact built beyond those lines anywhere?

Mr. OETTERSCHAGEN. Yes.

Mr. DENISON. Under a 30-day permit?

Mr. OETTERSCHAGEN. Under a 30-day clause, and they sign those clauses, too.

Mr. GRAHAM. They are temporary buildings?

Mr. OETTERSCHAGEN. They are temporary in view of the 30-day clause, but they are permanent in fact.

Mr. GRAHAM. There is a clause providing that they shall give them up upon 30 days notice?

Mr. OETTERSCHAGEN. That they will remove them in 30 days upon written notice.

Mr. GRAHAM. So that practically everyone along there has recognized that line?

Mr. OETTERSCHAGEN. I must say in that connection that they have recognized it under pressure. For example, if we were to have application for a permit for an intake tomorrow, I guess I can say that if any owner along the West Fork would come in with such a request and he would be informed of the existence of these lines that he would immediately commence laughing. It is a very cynical attitude that the abutting property owners have toward those lines, but nevertheless we tolerate this attitude and impress upon them the fact that we are expected to preserve the dignity of the West Fork as a navigable river.

Mr. GRAHAM. Mr. Eaton, how does that affect the pending proposition?

Mr. EATON. I do not know that it does; but say the situation should arise that this channel should require for dredging purposes a 200-foot channel and it is limited by agreement of the parties to a 175-foot channel?

Mr. DENISON. That could not bind the Government.

Mr. GRAHAM. That does not bind the Federal Government.

Mr. SACKETT. Any harbor lines laid out by the State are subject to approval by the Secretary of War.

Mr. GRAHAM. If it was a navigable stream the War Department would have to recognize them, and you do not know whether they have ever done that or not.

Mr. OETTERSCHAGEN. No; the attitude of the district office has been that they have had considerable confidence in the city office and, aside from the Calumet river, they have made no provision for the establishment of dock lines, except in certain cases where they have actually widened the river through the purchase of land, when the dock line resulting is a matter of record; otherwise the city has established them.

Mr. GRAHAM. I think that is all, Mr. Oetterschagen, thank you.

Is there anything further you think of, Mr. Eaton?

Mr. EATON. I think that is all.

If this is to be the end of the hearing, I would like to say that the city council, at its regular meeting last Wednesday, approved the course of our committee in its entire program in the following resolution:

"Whereas a resolution regarding the abandonment of the west fork of the South Branch of the Chicago River from a point near Robey Street to the city limits was introduced in the city council November 16, 1921, and referred to the committee on efficiency, economy, and rehabilitation; and

"Whereas the committee on efficiency, economy, and rehabilitation have been at work on this project during the past year and have prepared certain tentative plans for the abandonment of this stream as a navigable river, which plans will result in a saving to the city of many thousands of dollars, by the elimination of the necessity of maintaining bridges now existing and of the future construction of bridges over this stream, and also the elimination of a very unsanitary condition existing in the neighborhood, and will result in a large industrial development in this territory; and

"Whereas arrangements have been made for a meeting of a subcommittee of the Committee on Foreign and Domestic Commerce of the House of Representatives in room 606, Federal Building, on Friday, October 6, 1922, at 2 p. m., to consider legislation now pending before Congress and known as Senate bill No. 3177, providing for the initial step to carry out the plans of the committee on efficiency, economy, and rehabilitation; Therefore be it

Resolved, That the city council hereby indorses the work that has been done by its committee on efficiency, economy, and rehabilitation and urge that Congress pass the necessary legislation to carry into effect the plans as outlined."

Mr. DENISON. Mr. Eaton, if Congress should approve the project and appropriate the money for deepening this Western Branch around to the diversion channel so as to accommodate river traffic, do you think your attitude would be the same then as it is now with reference to closing it?

Mr. EATON. If there is any possibility of the Federal Government developing it so that it would become a useful artery of commerce helpful to any of this territory the city would say that that was a good purpose.

Mr. GRAHAM. Why is there not a possibility of that?

Mr. EATON. Because the expense involved would be so prohibitive that we believe from the attitude heretofore taken by the Government engineers that the Federal Government will never spend the necessary money on that project. That has been the conclusion of four Federal investigations. There have been two acts of Congress demanding that the Federal Government do it. Congress has legislated twice to have this done and when they get out here and the Federal engineers commenced to dig their shovels in and figure with their pencils they throw up their hands and go back and say that all that such an improvement would do would be to help one or two locally situated interests in here; just as Colonel Lockwood in his report says (p. 10, H. Doc. 392, 61st Cong., 2d sess.) and also because it is not a part of any general artery of commerce. That has been the definite finding. I think, upon two of three occasions—"that it forms no part of any continuous waterway that can be of any service to the United States Government."

Mr. DENISON. I think that is true with reference to the upper channel but when you get down here to the diversion channel and around to this loop, has there been any decision or finding of the Engineer Department with reference to that particular part of it? If there has been it would be pertinent to put that in the record.

Mr. EATON. I reply I will read the closing paragraph of the report of Col. D. W. Lockwood, senior member of the board, which specifically states that "from the mouth to Sacramento Avenue or from Western Avenue to Sacramento Avenue it is not worthy of improvement by the United States Government." The report reads (p. 10, H. Doc. 392, 61st Cong., 2d sess.):

"As there is considerable rock in the portion of the river under consideration, it is clear to the board that the cost of the work would be high and that it could only be justified by the assurance of the substantial benefits to the general public. The improvement now proposed would not form part of a transportation route of importance to the general public but would be in the nature of a long slip, of advantage principally to the few interests controlling the abutting property. While these interests are important, it is the opinion of the board that the benefits to be expected from the proposed work would not be sufficiently widespread in their distribution to justify the large expenditure of public funds required for this improvement. In view of the above the board concurs with the district officer and the division engineer in the opinion that the West Fork of the South Branch of the Chicago River from the mouth to Sacramento Avenue or from Western Avenue to Sacramento Avenue is not now worthy of improvement by the United States."

Mr. GRAHAM. When was that report made?

Mr. EATON. The report is dated July 12, 1909, and is part of a pamphlet marked, "House of Representatives Document 392, 61st Cong., 2d sess."

Mr. GRAHAM. Was the Sanitary Canal excavated at that time?

Mr. EATON. Yes, sir.

Mr. GRAHAM. And the collateral channel?

Mr. EATON. Yes; everything was practically just as it is now. They speak of the collateral channel in this report. Now, as I have already said, the city believes that these engineers rightly judged the situation at that time, for the progress of the years has shown that any great expenditure of public moneys on this stream would have been wasted. Furthermore, the costs of excavation have not diminished since that time but have increased tenfold, and everything else that would have to be undertaken here has increased materially, so that it is only reasonable to assume that if the Federal engineers would report against improving this fork in 1909 they would much more likely do so now. Therefore the question involved is, Will the Federal Government ever undertake to make that development? Now, what is the history of our harbor?

We are not now developing the Chicago River at any point. The Chicago River is on the down grade. In 1865 and up to 1870 the Chicago River was an important harbor, and was in active competition with the other harbors of the lake. But in the face of all the energy and power that has accumulated in the city of Chicago since that time, and the many hundreds and thousands of interests located here that would do everything in their power to sustain it as

a port and although many pilgrimages have been made to Congress to obtain aid from them in many ways to build up and sustain this commerce, nevertheless it has gone down until there is practically no commerce to speak of beyond the mouth of the river. Hence we came to the conclusion that if in 1909 the Federal engineers after thorough investigation would not recommend the amount of public money then needed to improve the West Fork, certainly they will not do so now, or in the reasonably near future and hence we must do something else with it rather than let it stand there in idleness a nasty, filthy menace to life and progress.

From the record as now before you it appears that the city of Chicago and all of the property owners on the West Fork west of the so-called collateral channel are strongly in favor of Senate bill 3177 to declare it nonnavigable, thus leaving it to the authorities of the State of Illinois to determine what further use shall be made of it. Neither Mr. Sackett nor Mr. Barnes, representing the department of waterways of the State of Illinois, nor the district Federal engineer are particularly opposed to this.

As to the portion east of the so-called collateral channel, the city of Chicago is also asking that you amend Senate bill 3177 so as to either declare the West Fork nonnavigable to the western line of Slip E or at least to Western Avenue. To such amendment the only objector is the International Harvester Co. who originally in 1909 urged the closing of the entire fork (pp. 6-7, H. Doc. 392, 61st Cong., 2d sess.) and who own land at the mouth of the fork. From the testimony presented by the International Harvester Co. in this record it is clear that they would be satisfied if the West Fork were left open from Western Avenue east to the mouth. To the city of Chicago this would be acceptable if Congress should think it best not to declare the whole fork nonnavigable and thus leave the entire question open to the local State authorities to deal with; which latter course it also seems from the record would also be acceptable to the International Harvester Co. The only reason why the city of Chicago is so very desirous that the West Fork be declared nonnavigable to at least Western Avenue is because it will be impossible to extend Blue Island Avenue through the territory and thus to follow the plan of the Chicago Plan Commission for a great diagonal highway connecting up with the Joliet and Bellefontaine Highways and thus connecting up the rest of the State to the West and Southwest to Chicago by a great modern highway for the great trains of motor trucks and trailers which are now so rapidly becoming the modern method of transportation because of their greater mobility.

Attention is drawn to the fact that the city of Chicago now owns most of the frontage on the West Fork east from the so-called collateral channel to Western Avenue. And that of the other owners neither the John Fitzpatrick Co. nor the Barnett Manufacturing Co. offer any objections such as can not readily be taken care of locally in case Congress should declare that portion of the fork nonnavigable and that the owners have not been sufficiently interested to appear.

Finally the reports of all the engineers investigating the possible improvement and development of the West Fork of the South Branch of the Chicago River indicate that the excessive cost will probably preclude this branch of the river ever being made navigable to a depth that will meet the demand of existing navigation or anything that may be expected to develop in the future and you have in this hearing the statement of Major Putnam, the United States engineer in charge of this district corroborating that statement; and further, if this river is not declared nonnavigable, the city of Chicago and the taxpayers will be required to expend millions of dollars in the useless construction of bridges over a worthless stream. Under such conditions, we do not believe any public benefit can result from continuing this branch of the river in the present condition, in view of the reports in the past and at present of the Federal engineers and for that reason we plead with you that Senate bill 3177 should pass, and also that you amend it so as to include the rest of the fork to the west line of Slip E or at least to Western Avenue so as to make possible the contemplated great highway through this territory leading to the West and Southwest for the great good of the people of the State of Illinois and of the city of Chicago.

Mr. GRAHAM. If you have nothing further to submit, I believe that concludes the hearings.

(The subcommittee thereupon adjourned sine die.)

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